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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the death penalty

Report of the Secretary-General

Summary

Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty. The present report confirms that the trend towards the universal abolition of the death penalty is continuing. During the reporting period, initiatives restricting the use of the death penalty were also recorded in several de facto abolitionist States, as well as in States that continue to apply the death penalty. Numerous initiatives have also been taken by States to implement the safeguards guaranteeing protection of the rights of those facing the death penalty. However, a minority of States continued to use the death penalty in contravention of international human rights law. As requested in Human Rights Council resolution 22/11, the present report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

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I. Introduction

1. Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty, including the most recent quinquennial report of the Secretary-General (E/2015/49 and Corr.1). Pursuant to Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

2. The report covers the period from April 2015 to June 2016 and is based on information received from States and other relevant sources, including national human rights institutions, United Nations agencies, United Nations country teams, international and regional intergovernmental bodies and non-governmental organizations. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on a moratorium on the use of the death penalty, which will outline national and international efforts made towards the implementation of General Assembly resolution 69/186 on a moratorium on the use of the death penalty, in which the General Assembly calls upon States, inter alia, to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984.

II. Changes in law and practice

3. Changes in law include new legislation abolishing or reinstating the death penalty, restricting it or expanding its scope, as well as ratification of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice comprise non-legislative measures, including executive and judicial measures, reflecting a new approach regarding the use of the death penalty.

A. Abolition of the death penalty, or initiatives taken for its abolition, including commitments provided to abolish it

4. Some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions for more than ten years. In particular, the Congo, Fiji, Madagascar, Mongolia, Nauru and Suriname abolished the death penalty during the reporting period. Côte d'Ivoire enacted a law to eliminate capital punishment from its penal code after it was abolished under the Constitution in 2000. The new Constitution of Nepal, which came into force in September 2015, states that no law shall be made providing for the death penalty. In the United States of America, the State of Nebraska abolished the death penalty.

5. In several other States, legislative and/or judicial processes to abolish the death penalty were initiated. For instance, Burkina Faso, Comoros, Guinea, Kenya and the Republic of Korea considered bills to abolish the death penalty. In early 2016, the Supreme Court of Zimbabwe heard two challenges to the death penalty, regarding its constitutionality[1] and the humanity of extended periods on death row.[2]

[1] Zimbabwe, *Farai Lawrence Ndlovu and Wisdom Gochera v. Minister of Justice, Legal and Parliamentary Affairs*.

B. Restrictions to the scope of the death penalty or limitations of its use

6. In several de facto abolitionist States, as well as in States that continue to apply the death penalty, some noticeable initiatives restricting its use were recorded during the reporting period. In the Central African Republic, new legislation for the establishment of a special criminal court for investigating and prosecuting war crimes, crimes against humanity and serious human rights violations was adopted in 2015 that excluded the death penalty as possible punishment.[1]

7. The Israeli Parliament rejected a bill that would have made it easier for military and district courts to sentence to death those convicted of terrorism offences by allowing the decision on sentencing to be taken by a majority of judges instead of the unanimity currently required.

8. The Law Commission of India published its second report on the death penalty, which concluded that the "death penalty does not serve the penological goal of deterrence any more than life imprisonment" and that the reliance on the death penalty diverted attention from problems in the criminal justice system. The Commission fell short of recommending that the death penalty be abolished for all crimes, instead suggesting that it be retained for terrorism-related offences and waging war.[3]

C. International and regional instruments contributing to the abolition of the death penalty

9. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which has been ratified by 81 States as at the end of June 2016, is the key international treaty prohibiting the use of the death penalty. In particular, the Optional Protocol is significant as the absence therein of a procedural clause for withdrawal means that once a State has ratified it, the death penalty can never be reintroduced without violating international law.

10. Furthermore, States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights have an obligation thereunder to take all necessary measures to ensure that the death penalty cannot be reintroduced. Benin, which ratified the Second Optional Protocol in 2012, accepted recommendations under the universal periodic review to amend as soon as possible the draft criminal code and the draft code of criminal procedure to bring them into line with the Optional Protocol (see A/HRC/22/9, para. 108.4). The Human Rights Committee also recommended that Benin adopt the new Criminal Code as soon as possible so as to expressly abolish the death penalty (see CCPR/C/BEN/CO/2, para. 19).

11. Laws authorizing accession to the Second Optional Protocol were adopted in Togo and considered in the Niger. Furthermore, during the universal periodic review process, several States, including Armenia (A/HRC/29/11), the Marshall Islands (A/HRC/30/13 and A/HRC/30/13/Add.1), the Federated States of Micronesia (A/HRC/31/4/Add.1), Myanmar (A/HRC/31/13), Nauru (A/HRC/31/7), Saint Lucia (A/HRC/31/10), Sao Tome and Principe (A/HRC/31/17), Suriname (A/HRC/33/4) and Tajikistan (A/HRC/33/11) accepted recommendations to ratify the Second Optional Protocol.

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[1] Zimbabwe, *Cuthbert Tapuwanashe Chawira and 13 others v. Minister of Justice, Legal and Parliamentary Affairs*.

[2] Organic Law No. 15.003, sect. 59.

[3] Law Commission of India, Report No. 262, The Death Penalty, August 2015, paras. 7.1.1 and 7.2.4.

12. Human rights treaty bodies continued to call for the ratification of the Second Optional Protocol. In its concluding observations on the report of Haiti (see CCPR/C/HTI/CO/1, para. 11), the Human Rights Committee regretted that the ratification of the Second Optional Protocol had recently been withdrawn from the parliament's agenda without satisfactory explanation and recommended that Haiti consider ratifying the Second Optional Protocol as soon as possible. The Committee also recommended that Iraq (see CCPR/C/IRQ/CO/5, para. 28), the Republic of Korea (see CCPR/C/KOR/CO/4, para. 23) and Suriname (see CCPR/C/SUR/CO/3, para. 20) consider acceding to this instrument. The Committee against Torture recommended that the Congo (see CAT/C/COG/CO/1, para. 7) and China (see CAT/C/CHN/CO/5, para. 50) ratify the Optional Protocol.

13. Death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions and United Nations treaty bodies. In paragraph 19 of its general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee noted that States have a good faith duty to comply with those measures even in the absence of a specific treaty provision to that effect. Belarus executed a death row prisoner whose complaint was before the Human Rights Committee, despite a specific request from the Committee for a stay of execution pending the examination of the petition.[7] Non-compliance with the Committee's request for interim measures constitutes a violation by Belarus of its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights to which it is a State party.

14. In article 11 of the European Convention on Extradition, it is stated that "if the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out". The Council of Europe reported that the accession of non-member States to this Convention requires a commitment, at the time of acceding to the Convention, to make a declaration on the non-execution of the death penalty. Under that condition, the Republic of Korea acceded to the Convention. A similar provision appears in article 21 (3) of the Council of Europe Convention on the Prevention of Terrorism, which has been ratified by 34 States to date. During the period in question, the Convention entered into force in Malta and Portugal on 1 December 2015 and was signed by the European Union.[8]

D. Reintroduction of the use of the death penalty, extension of its scope or resumption of executions

15. During the reporting period, the scope of the death penalty was expanded in a few States. The Iraqi Cabinet approved a proposed amendment to the Code of Criminal Procedure that expedites the implementation of death sentences by granting the Minister of Justice the power to ratify executions if the President does not ratify, pardon, issue clemency or commute final death sentences within 30 days. In Nigeria, two states

[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19958&LangID=E.

[8] The submission of the Council of Europe is on file with the Secretariat and is available for consultation.

Iraq, Ministry of Justice, "Cabinet vote on the draft law amending the Code of Criminal Procedure", 16 June 2015. Available from www.moj.gov.iq/view.1601/.

introduced laws prescribing the death penalty for kidnapping and several other states increasingly resorted to the death penalty, particularly to punish kidnapping.

16. Several States adopted new laws on counter-terrorism allowing the death penalty for vaguely and broadly defined terrorism-related crimes. Cameroon, Chad, Guyana and Tunisia enacted laws providing for the death penalty for a number of crimes related to terrorist activities. Pakistan adopted the Constitution (Twenty-First Amendment) Act of 2015 and the Pakistan Army (Amendment) Act 2015, allowing for the establishment of new military courts with the power to impose death sentences on civilians suspected of terrorism-related offences. Following the adoption of a new terrorism law, Chad resumed execution in August 2015.[5]

17. Other States also adopted new laws introducing the death penalty for other crimes. Bangladesh adopted the Coast Guard Act 2016, which provides for the death penalty for mutiny. Ethiopia proposed a new law on human trafficking and migrant smuggling, which provides a range of punishments, including the death penalty in cases where the victims suffered severe injury or death. Oman amended its law on combating drugs and narcotics, introducing the death penalty for a greater range of drug-related offences.

18. In the United States of America, the State of North Carolina enacted House Bill 774 aimed at the resumption of executions in the State. The law allows for the participation of medical professionals other than a physician in executions, contrary to medical ethics codes. It also allows the authorities to keep confidential any identifying information of any person or entity involved in the manufacture, preparation or supply of drugs used for lethal injection, in an effort to curtail litigation on this matter. Legislators in the State of Texas also voted in favour of a law to allow for secrecy on the providers of drugs used for lethal injections. The States of Oklahoma and Utah amended their legislation to allow for the use of nitrogen gas and firing squads to carry out executions, should lethal injection procedures not be implementable.

III. Information on the use of the death penalty

19. In its resolution 30/5 adopted in September 2015, the Human Rights Council emphasized that lack of transparency in the use of the death penalty had direct consequences for the human rights of the persons sentenced to death as well as for other affected persons. The Council called upon States that had not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon had been granted, which could contribute to informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty.

20. As noted by the Secretary-General in previous reports (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29, A/HRC/24/18 and A/HRC/27/23), it is difficult to obtain up-to-date and accurate global figures on the application of the death penalty, owing to the continued lack of transparency on the part of some Governments. In some countries, such as Belarus, China and Viet Nam, data on the use of the death penalty continues to be classified as a State secret, with disclosure constituting a criminal offence. Furthermore, information regarding the actual date of

[5] See www.un.org/apps/news/story.asp?NewsID=51772#.V4NlmU1f3cs.

executions is reportedly withheld from family members and lawyers of death row prisoners until the completion of the executions in some States, including Belarus,[9] Indonesia, Japan, Malaysia, South Sudan and Viet Nam.

21. Difficulties in obtaining information are compounded in countries affected by conflict, where it may not be possible to obtain sufficient reliable information to confirm the number of executions and other relevant details. The United Nations Assistance Mission for Iraq received several reports of executions being carried out, but no confirmation was obtained from the Iraqi authorities. The Office of the United Nations High Commissioner for Human Rights expressed its concern with regard to the fact that the Iraqi Ministry of Justice had ceased to communicate information to the United Nations in relation to the carrying out of executions.[10]

22. While examining the report of China, the Committee against Torture expressed concern about the lack of specific data on the application of the death penalty, which prevented it from verifying whether that new legislation was actually being applied in practice (see CAT/C/CHN/CO/5, para. 49). In its concluding observations on the report of Saudi Arabia (see CAT/C/SAU/CO/2, para. 42), the Committee expressed it deep concern about the continued existence of the death penalty and the failure of the State party to provide data requested by the Committee on the number of persons executed or on death row as well as, inter alia, the gender, age, nationality and other relevant demographics of the persons affected, and for what specific offences. The Committee called upon Saudi Arabia, inter alia, to provide disaggregated data on the number of individuals on death row and the number executed, detailing for which offences and whether any minors or persons with mental disabilities had been sentenced to death and/or executed and the other data required (ibid., para. 43).

IV. Safeguards guaranteeing the protection of the rights of those facing the death penalty

A. Restriction of use of the death penalty to "most serious crimes"

23. State parties to the International Covenant on Civil and Political Rights that have not yet abolished the death penalty should only impose it for the "most serious crimes". Crimes not resulting directly and intentionally in death do not meet the threshold of "most serious crimes" under international human rights law.[11] In the same vein, a limited degree of involvement or complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder or failing to prevent it, cannot justify the imposition of the death penalty. In draft general comment No. 36 being discussed by the Human Rights Committee, the Committee has stated that States parties are under an obligation to constantly review their criminal laws so as to ensure that the death penalty can be imposed, if at all, only for the most serious crimes and only for their chief perpetrators.

24. Drug-related offences do not meet the criteria for "most serious crimes". There is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences, nor

[9] The Special Rapporteur on the situation of human rights in Belarus has expressed concerns on the lack of transparency in the proceedings of the death penalty cases in Belarus (see A/HRC/29/43).
[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17051&LangID=E.
[11] See Human Rights Committee, draft general comment No. 36, 2015.

does it protect people from drug abuse. Nevertheless, 33 countries or territories[12] continue to maintain the death penalty for drug-related offences in their legislation. In some countries, drug offences account for the majority of death sentences handed down and executions carried out. During the reporting period, the death penalty was imposed or implemented for drug-related offences in a number of countries, including China, Indonesia, the Islamic Republic of Iran, Kuwait, the Lao People's Democratic Republic, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, the United Arab Emirates and Viet Nam. Foreign nationals continued to be sentenced to death and executed in cases related to drug trafficking in many countries.

25. United Nations human rights entities continued to address the issue of the use of the death penalty for drug crimes in violation of international law. In its follow-up evaluation of Indonesia, the Human Rights Committee awarded a grade E — the lowest possible evaluation score — for the country's failure to respond to the Committee's recommendation in 2013 to halt the execution of prisoners for drug-related crimes and to amend its legislation accordingly. The United Nations High Commissioner for Human Rights urged the Government of Indonesia to halt execution for drug offences and to conduct a thorough review of all requests for pardon with a view to commutation.[13]

26. During the panel discussion on the impact of the world drug problem on the enjoyment of human rights, held during the thirtieth session of the Human Rights Council, the United Nations Office on Drugs and Crime and the International Drug Policy Consortium, emphasizing that drug control measures must be consistent with international human rights law, encouraged States to abolish the death penalty for drug-related offences, recalling that they are not considered to fall under the category of "most serious crimes" (A/HRC/31/45). Furthermore, in its annual report of 2015, the International Narcotic Control Board recommended that drug control action must be consistent with international human rights standards. The Board advised all countries that continue to retain the death penalty for drug-related offences to consider abolishing capital punishment for this category of offences.[14]

27. During the same panel discussion, a number of States stressed that the death penalty should be abolished for drug-related offences, while others emphasized that their goal was the universal abolition of the death penalty in all circumstances, including for drug users. Colombia, for instance, expressed its concern regarding the high number of individuals facing a death sentence for drug-related crimes and proposed an agenda aimed at eliminating the death penalty (A/HRC/31/45).

28. On the occasion of the special session of the General Assembly on the world drug problem, a group of special procedure mandate holders and other independent experts reiterated that the death penalty for drug offences did not meet the threshold of "most serious crimes". They expressed collective disappointment that many States had failed to bring their national policies into accordance with that standard, emphasized that the application of capital punishment for drug-related offences directly contravened

[12] Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Democratic People's Republic of Korea, Egypt, India, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, Lao People's Democratic Republic, Libya, Malaysia, Myanmar, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Singapore, South Sudan, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen, as well as Gaza (State of Palestine) and Taiwan Province of China.

[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15654&LangID=E.

[14] See www.incb.org/documents/Publications/AnnualReports/AR2015/English/AR_2015_E.pdf.

international human rights law and urged States to make immediate commitments to its full abolition.[15]

29. The death sentence was also imposed in several countries for other offences that do not meet the threshold of "most serious crimes" under international law, including for economic crimes, such as embezzlement and taking bribes, and arson, adultery, apostasy and crimes of blasphemy. Several States also continued to use the death penalty for overly broad and vaguely defined terrorism-related crimes. In the report of the Secretary-General on a moratorium on the use of the death penalty, to be submitted to seventy-first session of the General Assembly, trends on the use of the death penalty for other crimes that do not meet the threshold of "most serious crimes" will be furthered discussed.

B. Prohibition of the mandatory use of the death penalty

30. According to the jurisprudence of human rights mechanisms, the mandatory use of the death penalty is not compatible with the limitation of capital punishment to the "most serious crimes". There have been some positive developments towards putting an end to the mandatory use of the death penalty in a few countries. In Uganda, a law was passed substituting the mandatory death sentence with a discretionary death sentence for any terrorism-related offences that result in death[16] and abolishing the death penalty for all other terrorism offences. A bill was also tabled before Parliament seeking to fully remove the mandatory death penalty and to restrict the application of the death penalty to the most serious crimes. In Malaysia, the Government plans to table a bill in 2016 to abolish the mandatory death penalty for drug-related offences.

31. The Supreme Court of Bangladesh held that the Suppression of Women and Children (Special Provisions) Act, 1995, under which the mandatory death penalty was provided for, was inconsistent with several provisions of the Constitution. In reaching that conclusion, the Court reiterated that mandatory sentences reduce the courts to a "rubberstamp of the legislature" and impede their power to take into account all circumstances surrounding the offence when deciding on a sentence.[17] The Supreme Court of Kenya heard a constitutional challenge to the mandatory death penalty,[18] regarding whether the imposition of the death penalty for individuals convicted for murder, irrespective of the circumstances of the case and of any mitigating features, is consistent with the right to life and the prohibition of inhuman and degrading punishment under the Kenyan Constitution.

32. Nevertheless, several States, including the Islamic Republic of Iran, Kenya, Malaysia, Nigeria, Pakistan and Singapore, reportedly continued to impose mandatory sentences.[19] The Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern that, despite recent reforms, the legislation of Singapore still provided for the mandatory death sentence for intentional murder and stated that such

[15] See www.ohchr.org/Documents/Issues/Health/UNGASS-joint_OI_HR_mechanisms_April2016.pdf.

[16] Anti-Terrorism (Amendment) Act 2016.

[17] Bangladesh, *Bangladesh Legal Aid and Services Trust and others v. Government of Bangladesh and others*, judgment of 5 May 2015. Available from http://supremecourt.gov.bd/resources/documents/808470_CivilAppealNo.116of2010.pdf.

[18] Kenya, *Mwangi and Muruatetu v. Republic of Kenya*, petition Nos. 15 and 16 of 2015. See www.deathpenaltyproject.org/news/2037/supreme-court-of-kenya-today-heard-submissions-on-mandatory-death-penalty.

[19] Sadakat Kadri, International Bar Association, "Forced to kill: the mandatory death penalty and its incompatibility with fair trial standards" (International Bar Association, 2016).

mandatory use of the death penalty was incompatible with international law. He urged the Government of Singapore to pursue legal reform that would put an end to mandatory death sentences, in line with international human rights and fair trial standards.[20]

33. Prisoners who have received a mandatory death sentence should promptly have their sentence reviewed by a competent body and have the right to seek pardon or commutation (see CCPR/C/MWI/CO/1/Add.1, para. 11). During the reporting period, a number of initiatives were undertaken to re-sentence those who were the subject of a mandatory death sentence. Those initiatives resulted in the commutation of the death sentence in a number of cases. In Singapore, the High Court commuted a death sentence after the prisoner applied for re-sentencing following the 2012 reforms to mandatory death penalty laws. Courts in Malawi have been conducting sentencing hearings in the cases of prisoners who received mandatory death sentences prior to a 2007 landmark case striking down the mandatory death penalty. Overall, the country's courts have completed 63 hearings, resulting in the immediate release of 51 prisoners in the light of the time they had already spent on death row.

C. Fair trial guarantees

34. The imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected constitutes a violation of the right to life.[21] Furthermore, forcing an individual to make or sign, under duress, a confession admitting guilt violates both article 7 (prohibiting torture and inhuman, cruel or degrading treatment) and article 14 (3) (g) (prohibiting compulsion to testify against oneself or confess guilt) of the Covenant.[22]

35. Algeria, Bahrain, the Lao People's Democratic Republic, Lebanon, Morocco and Qatar provided information regarding the legal guarantees and safeguards provided in their respective jurisdictions. Such guarantees and safeguards include the right to public trial, the right to legal representation and counsel, including the provision of a counsel financed by the State, respect for the principle of presumption of innocence, the right to appeal and freedom from torture.[23]

36. The Supreme People's Court of China issued new guidelines aimed at facilitating the participation of defence lawyers during the final review of death sentences. The Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued another set of guidelines that guarantee the rights of lawyers to have full access to their clients, as well as greater participation by defence lawyers during police investigations. That enhanced safeguard, however, did not extend to cases involving State security, "terrorism" or corruption.

37. However, United Nations human rights mechanisms have continued to express concern over the lack of a fair trial in death penalty cases in a number of States. On several

[20] "UN human rights experts urge Singapore not to execute a Malaysian national", press release, 18 May 2015. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19988&LangID=E.

[21] Human Rights Committee, communications No. 1044/2002, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006; No. 915/200, *Razmetov v. Uzbekistan*, Views adopted on 30 March 2006; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004. See also its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

[22] Human Rights Committee, general comment No. 32.

[23] Submissions from those States are in the files of the Secretariat and are available for consultation.

occasions, the Office of the United Nations High Commissioner for Human Rights urged the Government of Bangladesh not to implement death sentences in cases before the country's International Crimes Tribunal, particularly given concerns over the fairness of the trials.[24] The Office stated that, while recognizing the determination to tackle past crimes, the trials conducted before the Tribunal have not met international standards of fair trial and due process. Serious due process concerns, which have been repeatedly raised by various United Nations independent experts, include the lack of adequate access to legal assistance and a lack of equality of arms between the prosecution and the defence, among other issues.[25] On previous occasions, the Office has emphasized that the Tribunal should ensure the highest standards of proceedings if it is to reinforce the rule of law in Bangladesh and the fight against impunity for the atrocities committed in 1971 (see A/HRC/27/23, para. 46).

38. The Office of the United Nations High Commissioner for Human Rights also expressed concern about the imposition of the death penalty by courts in the Gaza Strip in the State of Palestine. The Office condemned the execution of three men by authorities in Gaza, despite serious and widespread concerns that international fair trial standards were not respected.[26] The Office also expressed regret over executions in Afghanistan amid grave concerns regarding compliance with fair trial standards, and reports concerning the widespread use of torture and ill-treatment as a means of extracting confessions.[27]

39. The Special Rapporteur on extrajudicial, summary or arbitrary executions and other special procedure mandate holders of the Human Rights Council expressed concern over the lack of a fair trial in death penalty cases in a number of States, including Afghanistan, Belarus, Chad, the Democratic People's Republic of Korea, Egypt, the Islamic Republic of Iran, Pakistan and Saudi Arabia.

D. Right to seek pardon or commutation

40. Pursuant to article 6 (4) of the International Covenant on Civil and Political Rights, States parties to the Covenant are required to allow individuals sentenced to death to seek pardon or commutation and to ensure that amnesties, pardons and commutations can be granted to them in appropriate circumstances. In accordance with the jurisprudence of the Human Rights Committee, State parties to the Covenant should also ensure that sentences are not carried out before requests for pardon or commutation have been conclusively decided upon,[28] and no category of convicts can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, exceptionally burdensome, discriminatory in nature or applied in an arbitrary manner.[29]

41. During the reporting period, commutations or pardons of death sentences have been granted by both the judiciary and executive authorities. A common reason for commutation by the executive is as a means of enforcing a moratorium on the death penalty. For example, the President of Zambia commuted the death sentences of 332 people to life imprisonment, a decision welcomed in a joint statement by special procedure mandate

[24] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15809&.

[25] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19796&LangID=E.

[26] See www.un.org/apps/news/story.asp?NewsID=54102#.V1aUDk1f3cs.

[27] See www.un.org/apps/news/story.asp?NewsID=53894#.V1aVEU1f3cs.

[28] Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007, para. 7.6, and draft general comment No. 36, 2015.

[29] Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 7.5, and draft general comment No. 36, 2015.

holders. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that, by commuting those death sentences, Zambia had put a stop to mental and physical pain and suffering and taken an important step towards ensuring respect for the inherent dignity of the person. They noted that the decision supported previous steps towards the abolition of capital punishment in Zambia, where a presidential moratorium on the death penalty had been maintained since 1997.[10]

42. Judiciaries in many States tend to commute the death penalty or pardon those sentenced to it in response to doubts about the guilt of the offender, concerns over the application of due process standards, remorse shown by the petitioner or for the rehabilitation of the petitioner. For example, the Supreme Court of Belize commuted the death sentence of the last remaining person on death row, holding that his 13 years on death row amounted to inhuman treatment and rendered his death sentence unlawful. Indian courts commuted to life imprisonment the death sentences of several prisoners, including three prisoners whose mercy petitions the President of India had previously rejected. In Jamaica, the death sentence of the last remaining person on death row was commuted.[11] In Saudi Arabia, the punishment of a woman sentenced to death by stoning for committing adultery was reviewed and commuted by a court.

43. The United Nations human rights treaty bodies continued to recommend that States commute all death sentences. For example, in its concluding observations on the periodic report of the Republic of Korea, the Human Rights Committee recommended, inter alia, the commutation of all death sentences (see CCPR/C/KOR/CO/4, para. 23). The Committee against Torture encouraged China, inter alia, to commute all existing death sentences (see CAT/C/CHN/CO/5, para. 50).

Commutation or clemency/pardon procedure

44. Under article 6 (4) of the International Covenant on Civil and Political Rights, a particular procedure is not prescribed for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures.[12] However, in accordance with the jurisprudence of the Human Rights Committee, such procedures should be specified in domestic legislation (see CCPR/CO/72/GTM, para. 18), and they should not afford the families of victims a preponderant role in determining whether the death sentence should be carried out (see CCPR/CO/75/YEM, para. 15).[13] Furthermore, the Committee has ruled that pardon or commutation procedures must offer certain essential guarantees, including clarity about the processes followed and the substantive criteria applied, a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances, a right to be informed in advance when the request will be considered and a right to be informed promptly about the outcome of the procedure.[14]

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[10] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16258&LangID=E.

[11] Jamaica, Court of Appeal, *Moodie v. R.*, ruling delivered on 31 July 2015.

[12] Communication 845/1999, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.4.

[13] See also Human Rights Committee, draft general comment No. 36, 2015.

[14] See Human Rights Committee, draft general comment No. 36, 2015. See also A/HRC/8/3, para. 67, and report No. 41/00 (Mckenzie et al.) of the Inter-American Court of Human Rights, which prescribes similar procedural guarantees.

45. During the reporting period, legislative initiatives were undertaken in some countries to introduce legal processes to facilitate the application and granting of clemency and/or commutation. The Government of Afghanistan reported that the President was considering the desirability of legal reform, including of the Penal Code and the Criminal Procedure Code, to allow for death sentences to be commuted to life imprisonment. In Guatemala, two draft decrees were submitted to the National Congress that set out a procedure for executive clemency, a final recourse that was already required by law.[14] In the United States of America, the Governor of the State of Georgia signed into law a bill requiring the Board of Pardons and Paroles to improve transparency and provide explanations regarding its decisions when the latter result in the commutation of death sentences. However, that requirement does not extend to cases in which the pardon request is rejected.[15] In the Islamic Republic of Iran, after the new Code of Criminal Procedure came into force, all death sentences became subject to confirmation either by the Head of the Supreme Court or the Prosecutor General, who are entitled to revise or quash the sentence if they find it contravenes Islamic law or that the judge was not competent.

46. In a recent ruling on clemency procedures, the Court of Appeal of Botswana established that there is a constitutional right to petition the President for clemency, and that it is obligatory for a committee to meet to consider every clemency petition. The Court also insisted on certain additional guarantees, such as the need to consider any material provided by the petitioner, the provision of *pro Deo* counsel to advise on and prepare the clemency petition, and affording the petitioner sufficient time and information for him to adequately prepare his application. However, the six-week timeline mandated by the Court will generally not be sufficient to prepare a petition, and the Court also commented that the rules of natural justice do not apply to the committee.

47. In certain cases, individuals sentenced to death reportedly refuse to seek clemency. States should nevertheless provide for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence.[16] In particular, it should be borne in mind that "death row volunteers" who refuse to seek an appeal or clemency may not have full mental competency when making their decision.[17] Sufficient time must be given to petitioners to exercise the right to seek clemency in order for it to be effective, and it must be clear that the individual has waived his or her right to seek clemency before the execution is carried out. However, certain States continue to allow only very short periods of time in which to file such petitions, for example 7 days in Viet Nam and 14 days in Egypt.

E. Prohibition of public executions

48. In its resolution 30/5, the Human Rights Council recalled the calls to consider whether the use of the death penalty violated the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, inter alia, because of the methods of execution. It further stated that all methods of execution could inflict inordinate pain and suffering, and that the circumstances in which executions were carried out, in particular

[14] See http://elperiodico.com.gt/2016/02/13/opinion/pena-de-muerte/ and www.efe.com/efe/america/politica/piden-en-guatemala-restituir-figura-de-indulto-y-con-ella-la-pena-muerte/20000035-2863701.

[15] United States of America, State of Georgia, House Bill 71 on pardons and paroles, signed on 1 May 2015.

[16] See Economic and Social Council resolution 1989/64.

[17] See John H. Blume, "Killing the Willing 'Volunteers', Suicide and Competency", *Cornell Law Faculty Publications*, paper 16 (2004).

public executions, which implied an undignified exposure of the persons sentenced to death, and secret executions or those with short or no prior warning, added to the suffering of the persons sentenced to death, as well as of other affected persons.

49. Despite the prohibition of public executions in international law, the Islamic Republic of Iran and Saudi Arabia continued to execute death row prisoners in public on a regular basis. In his recent report on the human rights situation in the Islamic Republic of Iran (A/70/352), the Secretary-General noted with concern that the practice of public executions persisted in the country, despite their dehumanizing, cruel, inhuman and degrading effect on the victims and on observers. At least 58 individuals were publicly executed in 2015. In its concluding observations on the third periodic report submitted by the Islamic Republic of Iran, the Human Rights Committee recommended ending that practice (see CCPR/C/IRN/CO/3, para. 12).

V. Use of the death penalty against children and persons with mental or intellectual disabilities

A. Children

50. Pursuant to article 6 of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child, neither capital punishment nor life imprisonment can be imposed for offences committed by persons under 18. Nevertheless, capital punishment for offences committed by children remains lawful in 15 countries.[37]

51. During the reporting period, at least four persons were executed for crimes committed as children in Saudi Arabia and at least three offenders who were under the age of 18 at the time of their arrest remain at imminent risk of execution. In September 2015, three United Nations experts released a statement urging Saudi Arabia to immediately halt the execution of children.[38]

52. In his report to the Human Rights Council on the situation of human rights in the Islamic Republic of Iran, the Secretary General raised concerns about the rate of execution of juvenile offenders in the country (see A/HRC/31/26, paras. 13-15). The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has reported that the Islamic Penal Code of Iran retains the death penalty for boys of at least 15 lunar years of age and girls of at least 9 lunar years for certain crimes (see A/HRC/31/69, para. 19). There were at least four juvenile executions in 2015 with at least 160 others awaiting the same fate on death row.[39] In Maldives, where the age of criminal responsibility is 15, at least three persons were also sentenced to death for crimes they committed as children,[40] and, as at the end of 2015, six individuals were on death row for offences committed while under the age of 18.[41]

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[37] The Child Rights Information Network has produced reports for the countries included within this figure, available from www.crin.org/node/42131.

[38] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487.

[39] See www.amnesty.org/en/documents/mde13/3112/2016/en/.

[40] The original High Court judgment is available in Dhivehi at www.highcourt.gov.mv/dhi/mediamanager/2011-49.pdf.

[41] Amnesty International, *Death sentences and executions* (2015). Available from www.amnesty.org/en/documents/act50/3487/2016/en/.

53. Methods and procedures in some States result in the judgment of juveniles as adults and, subsequently, the subjection of juveniles to the death penalty. In Pakistan, trial courts are obliged to determine the defendant's age. Courts, however, reportedly often fail to undertake that assessment and place the burden of proof of age upon the defendant,[44] despite a significant number of citizens possessing no official documentation with which to prove their age. During the reporting period, cases were reported where proof was presented but disregarded by the court in favour of visual assessments conducted by the police or unverified documentation supplied by the claimant, or where evidence was dismissed due to it being raised at the "incorrect" stage of proceedings. In June 2015, three United Nations independent experts called on Pakistan to halt the execution of Shafqat Hussein, who was convicted of kidnapping and voluntary manslaughter committed as a child following a trial using evidence allegedly obtained through torture.[45] Mr. Hussein was executed by the authorities in August 2015.

54. As stated by the Committee on the Rights of the Child in its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, if there is a possibility that an individual facing the death penalty is a child, they should be treated as such. An individual who says that he or she is a child should be afforded all the special protections and rights contained in the Convention on the Rights of the Child, including the right not to be executed, unless it can be conclusively determined that the individual is an adult. The Committee on the Rights of the Child has also stated, in its general comment No. 10 (2007) on children's rights in juvenile justice, that if there is no proof of age, the individual is entitled to a reliable medical or social investigation that may establish their age and, in the case of conflict or inconclusive evidence, the child shall have the right to the benefit of the doubt.

55. The Supreme Court of Bangladesh ruled that the mandatory death penalty was unlawful during the appeal of a man who was sentenced to death for rape and murder allegedly committed when he was 14 years of age. However, it did not order a re-sentencing of those who had been sentenced to death under the legislation and it appears that children may still be subject to a mandatory death sentence.[46] All individuals, but in particular children, sentenced to death under legislation providing for the mandatory imposition of the death penalty should be re-sentenced through a process that takes into account the personal circumstances of the offender and the particular circumstances of the offence, including its specific aggravating or attenuating elements.[47]

56. While the abolition of, or moratoriums on, the death penalty are welcome developments, concerns remain that they can lead to an increase in the number of juveniles sentenced to life imprisonment. The Special Rapporteur on the question of torture has stated that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child (see A/HRC/28/68, para. 74). States should therefore ensure that children are not sentenced to life imprisonment as an alternative to the death penalty.

[44] Submission of Pakistan Justice Project, dated April 2016. The submission is on file with the Secretariat and is available for consultation.

[45] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E.

[46] Child Rights Information Network, submission to the present report, available at www.crin.org/en/library/publications/death-penalty-submission-secretary-generals-report-death-penalty-2016.

[47] See Human Rights Committee, draft general comment No. 36, 2015. See also communication No. 390/1990, *Eubote v. Zambia*, Views adopted on 31 October 1995, para. 7.2.

B. Persons with mental or intellectual disabilities

57. In accordance with international human rights law, the death penalty should not be imposed on persons with mental or intellectual disabilities. The judiciary in several States took the initiative of addressing the issue of the use of the death penalty against persons with mental or intellectual disabilities, in particular regarding the acceptance of evidence of mental illness. For example, the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland quashed a death sentence after accepting medical evidence adduced that clearly demonstrated that the accused suffered from chronic schizophrenia.[45] However, presenting such evidence is reportedly hampered by the lack of resources available for obtaining forensic psychiatric and psychological evaluations.

58. Pakistan reportedly executed death row prisoners with mental disabilities. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the rights of persons with disabilities called on the authorities in Pakistan to protect the right to health of inmates in death row with severe psychosocial disabilities, irrespective of their legal situation, guaranteeing their access to the health services required by their situation. They reminded Pakistan of its obligations under the Convention on the Rights of Persons with Disabilities, to which it is a party. They noted that the Government of Pakistan was bound to respect, in particular, the right to life and the inherent dignity of detainees with disabilities, and must provide reasonable accommodation in detention.[46]

VI. Human rights of children of parents sentenced to the death penalty or executed

59. In its resolution 30/5 on the question of the death penalty, the Human Rights Council acknowledged the rights of children of parents sentenced to death or executed. It called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform them where the body is located, unless that was not in the best interests of the child. In that resolution, the Council built on past consensus language from its resolution 19/37 on the rights of the child.

60. When examining reports of State parties, the Committee on the Rights of the Child continued to address the issue of human rights of children of parents sentenced to the death penalty or executed. For example, in its concluding observations on the periodic report of the United Arab Emirates (CRC/C/ARE/CO/2), the Committee on the Rights of the Child expressed concerns about the impact on children where the death penalty is imposed on their parents and the lack of attention paid to providing psychological support for such children (ibid., para. 51). The Committee recommended that the State take into consideration the existence of children and their best interests when considering the death penalty and provide psychological and other support necessary to children whose parents have been sentenced to death (ibid., para. 52).

[45] Trinidad and Tobago, *Stephen Robinson v. The State (Trinidad and Tobago)*, judgment of 20 July 2015.

[46] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E.

VII. Conclusions

61. As demonstrated in the present report, initiatives in several countries represent important steps towards universal abolition of the death penalty. It is now beyond question that there is widespread agreement that ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights contributes to the enhancement of human dignity and the progressive development of human rights, and that all measures to abolish the death penalty constitute progress in the enjoyment of the right to life. States that have not yet ratified the Second Optional Protocol should therefore do so without delay.

62. In many countries, the majority of executions are carried out in respect of convictions for drug-related offences. This is despite such offences not meeting the threshold of "most serious crimes" required under the International Covenant on Civil and Political Rights, and despite confirmation from international drug control bodies, including the United Nations Office on Drugs and Crime, that there is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences. States should immediately halt the execution of offenders who have been convicted for drug-related crimes and are reminded that the term "most serious crimes" refers to offences of intentional killing only.

63. The mandatory imposition of the death penalty is wholly incompatible with the principle of necessary safeguards to ensure the rights of those sentenced to death. The lack of discretion makes it impossible for the individual circumstances of the offender and the offence to be taken to account and therefore to ensure a fair application of the death penalty. The Secretary-General welcomes the initiatives of those States that have abolished the mandatory death penalty and, in particular, the procedures undertaken in those countries to re-sentence those who had been subjected to the mandatory death penalty, resulting in a significant number of commutations. States who maintain the mandatory death penalty should abolish it immediately and re-sentence those who had been sentenced under it.

64. International law also requires safeguards to be put in place to ensure that those subject to the death penalty are treated fairly and are only executed after it has been proved beyond reasonable doubt that they have committed a most serious crime. One such safeguard is the procedure to request clemency, pardon or commutation, which acts as a final check to ensure that no one is executed contrary to national or international law. However, as outlined in the present report, many States still maintain non-existent or ineffective procedures through which individuals subject to the death penalty can seek clemency or pardon. States should ensure that an effective procedure is available to death row convicts as required under the International Covenant on Civil and Political Rights and elaborated upon in international jurisprudence.

65. Many States continue to execute juvenile offenders despite the clear prohibition in international law. States should immediately re-sentence all juvenile offenders on death row, while ensuring that such individuals do not receive life sentences in place of execution. States should also amend their legislation and relevant rules and procedures to ensure that no child is executed and that no person is executed for a crime committed while under the age of 18. Similarly, in accordance with the relevant jurisprudence, States should not subject people with mental or intellectual disabilities to the death penalty.

66. Lack of information on executed persons has profound consequences for individuals subjected to the death penalty and their close family and friends. Lack of annual data on executions also impedes the effectiveness and transparency of the debate on the abolition of the death penalty as well as efforts to safeguard the right to life. The Secretary-General therefore echoes the call of the Human Rights Council to States that have not yet abolished the death penalty to make available relevant, disaggregated information on the number of executions carried out, reversed or pardoned each year.

67. Concerns remain that those States continuing to implement the death penalty do so in ways that are incompatible with their obligations under international law. Those countries should take heed of recommendations from other States in the universal periodic review process and concluding observations, general comments and other jurisprudence from human rights treaty bodies, as well as recommendations from the special procedure mandate holders of the Human Rights Council, when implementing the death penalty in order to ensure conformity with international standards.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Commemoration of the thirtieth anniversary of the Declaration on the Right to Development

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 31/4. It provides a summary of the panel discussion on the promotion and protection of the right to development in commemoration of the thirtieth anniversary of the Declaration on the Right to Development, held on 15 June 2016, during the thirty-second session of the Council.

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I. Introduction

1. Pursuant to its resolution 31/4, the Human Rights Council held a panel discussion on the promotion and protection of the right to development, in commemoration of the thirtieth anniversary of the Declaration on the Right to Development, on 15 June 2016, during its thirty-second session. The present report contains a summary of the panel discussion.

2. The objective of the panel discussion was to increase awareness among all stakeholders, including Member States, relevant bodies of the United Nations system, in particular human rights mechanisms, and specialized agencies, funds and programmes, as well as the international financial and trade institutions, of the distinct role and intrinsic value of the right to development. The panel sought to generate policy recommendations and practical measures for making the right to development a reality for everyone, in the context of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

3. The panel discussion was chaired by the President of the Human Rights Council and moderated by the Permanent Representative of Egypt to the United Nations Office at Geneva, Amr Ramadan. The panellists were the Secretary for Human Rights at the Ministry of Justice of Brazil, Flavia Piovesan (Brazil); the Permanent Representative of Jamaica to the United Nations Office at Geneva and Chair of the Geneva Chapter of the Group of 77, Wayne McCook (Jamaica); the Head of the Department of International Law and Human Rights and Director of the Human Rights Centre of the United Nations-mandated University for Peace in Costa Rica, Mihir Kanade (India); and the Executive Director of the South Centre, Martin Khor (Malaysia).

4. After the opening statement, the moderator introduced the topic and defined the scope of the discussion. The panellists subsequently made their initial statements, which were followed by an interactive discussion chaired by the President of the Human Rights Council. The discussion comprised two rounds of interventions by representatives of States, observers and non-governmental organizations with comments and questions from the floor, followed by comments and replies by panellists. The discussion concluded with final responses from the panellists and concluding remarks by the moderator.

II. Opening of the panel discussion

5. The President of the Human Rights Council opened the panel discussion. Subsequently, a video marking the thirtieth anniversary of the adoption of the Declaration on the Right to Development, prepared by the Office of the United Nations High Commissioner for Human Rights, was screened. The video explained that the Declaration defined development as an economic, social, cultural and political process aimed at the constant improvement and well-being of the entire population. However, development had been impaired by States not always respecting human rights in their development decisions, and inequalities in the world were growing. The Declaration was a road map for transformative change and called for accountability at all levels. It required States to be responsible for their actions at home and abroad. The right to development made development the right of all individuals and peoples.

6. In his welcoming remarks,[1] the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, said that, 30 years ago, the Declaration on the Right to Development had broken new ground in the struggle for greater freedom, equality and justice. It acclaimed long-lost freedoms and independence, and reasserted equality for all nations and peoples, including their right to self-determination and their right to sovereignty over natural resources. The Declaration placed individuals at the heart of development, and it called for all to be empowered to participate fully and freely in vital decisions. It demanded equal opportunities and the equitable distribution of economic resources, especially for people traditionally marginalized, disempowered and excluded from development.

7. The Declaration called for better governance of the international economic framework and redefined development as far deeper, broader and more complex than the narrow, growth-and-profit focus of previous decades. Although some progress had been made towards realizing that vision, progress had been uneven, particularly for people in Africa, least developed countries, landlocked developing countries, small island developing States and most other developing countries. Persistent poverty and rising inequalities continued to rob people of their rights and fuelled multiple crises and conflicts. Trade and investment policies and agreements could also have profound implications on the realization of human rights. Recently, sprawling pacts known as megaregionals had begun to change the landscapes of trade and investment in quite unprecedented ways.

8. The High Commissioner affirmed that the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda of the Third International Conference Financing for Development and the Paris Agreement on climate change had set forth detailed and realistic programmes that built on each other, with the potential to transform the realization of human rights. The 2030 Agenda promised to end extreme poverty and promoted an integrated vision of development with shared responsibilities. That vision was born of the Declaration, which offered prevention since it promised solutions for root causes, including structural challenges at all levels. At the international level, the right to development addressed multiple challenges originating in a failure to adequately regulate globalization. The engines of globalization, such as trade, investment, finance and intellectual property, must be compatible with the human rights obligations of States.

9. The 2030 Agenda addressed many of the systemic obstructions that disadvantaged the poor, such as distorted trade frameworks and weak international governance over powerful transnational actors. It promised better regulation of global financial markets and an enhanced voice for developing countries in international economic and financial institutions. It committed all States to cooperate for international development and endorsed the principle of special and differential treatment. It also contained strong commitments to provide access to justice for all, with effective, accountable and inclusive institutions at all levels, and to end corruption.

10. Thus, the 2030 Agenda was a child of the right to development. It echoed the Declaration's emphatic call for "equal attention and urgent consideration" to the implementation, promotion and protection of all civil, political, economic, social and cultural rights, and its insistence that the promotion of, respect for and enjoyment of one so-called "category" of human rights could not justify the denial of other human rights and fundamental freedoms. Moreover, the right to development extended even beyond the massive global agenda of the Sustainable Development Goals; it offered a framework in which to address gaps and failures in responsibility, accountability and regulation in both

[1] The full text of the statement is available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20163&LangID=E.

national and global governance. As the Declaration on the Right to Development clearly stated, everyone, without distinction, was entitled to a social and international order in which human rights and freedoms could be realized. He underlined that the thirtieth anniversary of the Declaration must renew in everyone the spirit of multilateral action for the common good, which was the only hope for survival on the small and fragile planet shared by all.

III. Summary of the panel discussion

11. In his opening remarks, Mr. Ramadan underlined the importance of the panel in the light of the recent significant developments intrinsically related to the realization of the right to development in its diverse aspects. The thirtieth anniversary of the Declaration on the Right to Development was to be celebrated as it marked the recognition of development as an inalienable and independent human right. However, he expressed concern that the progress achieved in the realization of the right had been uneven, as demonstrated in Africa, the Middle East, least developed countries, landlocked developing countries and small island developing States.

12. Nonetheless, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda and the Paris Agreement had paved the way for realizing the aspirational vision embodied in the Declaration. The 2030 Agenda, in particular, constituted an important vehicle for the realization of the right to development. It set a transformative vision for people that aimed at the realization of the various human rights that formed part and parcel of the right to development. Mr. Ramadan affirmed that as the Vienna Declaration and Programme of Action recognized while lasting progress towards the implementation of the right to development required effective development policies at the national level, it also necessitated equitable economic relations and a favourable economic environment at the international level.

13. Mr. Ramadan highlighted the pivotal role played by the Working Group on the Right to Development, which monitored and reviewed progress in the promotion and implementation of the right to development at the national and international levels. He hoped that the progress achieved in its work, particularly in formulating a set of standards for implementing the right to development, would assist the endeavours exerted to that end. The vision of the Declaration must be the guiding force in the implementation of the 2030 Agenda and the Addis Ababa Action Agenda in a comprehensive, equitable and balanced process that addressed the main pillars of development by inter alia, enhancing international cooperation and exchange of expertise in a way that ultimately left no one behind.

14. Mr. Ramadan outlined the guiding questions for the panel discussion: How can the United Nations system, in particular human rights mechanisms, contribute to the implementation and realization of the right to development? How can the United Nations system help to overcome the existing challenges around the right to development as an independent and distinct right? What role can international cooperation play in the realization of the objectives enshrined in the Declaration on the Right to Development? How can the implementation of the 2030 Agenda contribute to the implementation of the Declaration on the Right to Development, with a view to achieving inclusive, equitable and sustainable development for all? How can the right to development be operationalized to create an environment conducive to achieving the Sustainable Development Goals, in particular Goal 17 on strengthening the means of implementation and revitalizing the global partnership for sustainable development? What ways and means can be pursued to integrate, claim and build capacity on the right to development among all stakeholders?

A. Contributions of panellists

15. Ms. Piovesan recalled that 30 years ago the United Nations adopted the Declaration on the Right to Development, which established a framework that provided individuals and peoples, both domestically and globally, the right to equitable, sustainable and participatory development in accordance with the full range of human rights and fundamental freedoms. The incorporation of a human rights-based approach to development was among the greatest achievements of the Declaration. Since then, that approach had guided the integration of norms, standards and principles of the international human rights system into the plans, policies and processes of development, including the 2030 Agenda and the Sustainable Development Goals.

16. It was essential to review the Declaration's contributions and explore its perspectives, inspired by the human rights-based approach to development as well as by the development approach to human rights. By making the human person the central subject of development through their active participation in development instead of being mere beneficiaries, the Declaration played a crucial role in redefining development, shifting it from the purely economic dimension based exclusively on gross domestic product to a conception based on the human dimension and human dignity. The Declaration took a holistic, human-centred approach to development, seeing it as a comprehensive process aiming to improve the well-being of all individuals on the basis of their active, free and meaningful engagement and the fair distribution of its gains.

17. The attributes and components of a human rights approach to development were social justice, participation, accountability and transparency, and international cooperation. Concerning social justice, the Declaration recognized development as an economic, social, cultural and political process aimed at the constant improvement of human well-being. Nevertheless, there was a process of feminization of poverty, as women constituted 70 per cent of the people who lived in poverty. About 80 per cent of the world's population lived in developing countries, marked by low income and educational levels and high rates of poverty and unemployment; 85 per cent of the world's income went to the richest 20 per cent, whereas 6 per cent went to the world's poorest 60 per cent. The answer of the Declaration was that, in promoting development, equal consideration must be given to all human rights as incorporated in the 2030 Agenda, especially the eradication of poverty, gender equality and reduced inequalities.

18. Ms. Piovesan, quoting Mary Robinson on the right to development, stated that the great merit of a human rights approach was that it drew attention to discrimination and exclusion. It permitted policy makers to identify those who did not benefit from development. Its democratic component embraced participation, accountability and transparency. The Declaration was the only international instrument that made the nature of participation in development so explicit. In its pursuit of peaceful and inclusive societies, justice for all and effective, accountable and inclusive institutions at all levels through Goal 16, the 2030 Agenda reinvigorated the Declaration's principle of participation. Political liberties and democratic rights were among the constituent components of development, since democracy was conditioned not just by institutions, but by the extent to which different voices could be heard.

19. Regarding international cooperation, the Declaration foresaw that States had a duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. They were bound to cooperate in ensuring development and eliminating obstacles to development. In that sense, Goal 17 of the 2030 Agenda demanded further strengthening of international cooperation. The former high-level task force on the implementation of the right to development had identified criteria regarding the responsibilities of States acting

collectively at the global and regional levels in that regard. Those criteria included stability, rule of law, predictability, non-discrimination, peace, security, democracy, transparency, accountability, human rights and a fair distribution of the benefits and burdens of development.

20. Ms. Piovesan stressed that a basic value of the right to development was solidarity, which invoked the principle of shared responsibility in the global order. She concluded by recalling that the 2030 Agenda was informed by the Declaration, and that the Declaration remained a dynamic and living instrument capable of addressing the contemporary challenges of advancing global democracy and global justice based on solidarity, international cooperation and participation, and the active engagement and creativity of civil society; development was therefore an empowering process.

21. Quoting Bob Marley, "Them belly full but we hungry, a hungry mob is an angry mob", Mr. McCook stated that the right to development, encompassing civil, political, economic, social and cultural rights, was a globally accepted right that laid the foundation upon which the international community based the promotion and protection of fundamental human rights. He warned that while the international community had agreed on the right to development, it could not assume that the task was done by simply agreeing that it was so. States must commit to taking the steps to realize the right to development and recognize that the right must be promoted and protected by all.

22. Mr. McCook recalled that the holistic approach of the right to development was first taken by Jamaica which, on gaining independence in 1962, called for human rights to be placed at the centre of the global agenda. Jamaica had come from a legacy of slavery and colonization and therefore called for commitments to ensure that those and other practices of the past would be banished from collective values and replaced with fundamental commitments that would secure for future generations the rights denied in the past. The narrative of the human right to development had for too long been about statistics instead of people. Development was not merely growth; it was a measure of the opportunity to which such growth should be directed. Therefore, the right to development was vital to the human rights agenda because it came after sober reflections on abuses.

23. The right to development recognized that human rights had been brutally sacrificed at the altar of economics and commerce, the most horrific manifestation of which was the transatlantic slave trade. The ultimate purpose of commerce and economics, social and cultural development should be to serve the human person. To pursue the right through policy measures, affirmative actions were needed to help restore the balance and bring equity. The fundamental principles of the 2030 Agenda enjoyed natural synergies with the Declaration that could be harnessed by moving from rhetoric to reality and putting to rest the debate about a "hierarchy of rights". The right to development was an enabler of other rights. Social harmony and the freedoms that we cherished could best be attained when societies were free from the risk of being drowned in poverty and destitution.

24. Furthermore, domestic agendas demanded increasing obligations. Freedom from fear and want would be achieved by placing the human person before economic, social, and cultural development. The right to development could not be squared with systems that relied on unequal structures. It was a human right in which all peoples were entitled to participate; it recognized the interlinked relationship between rights and development processes.

25. Mr. McCook stressed that in implementing the Sustainable Development Goals, inequity should not be crystalized but corrected by taking affirmative measures. The solemn pledge of the 2030 Agenda to leave no one behind and its affirmation that the dignity of the human person was fundamental left no doubt. In order to implement the right to development and the Goals, States must begin moving towards fulfilling the ambitious

goals that had been set. The 2030 Agenda had reinforced the duty to eradicate poverty and hunger, which were the biggest threats to the realization of the right to development.

26. Mr. Kanade said that it was indispensable to operationalize the right to development and that the only way forward for realistically implementing the Sustainable Development Goals as envisioned in the 2030 Agenda. That meant embedding the implementation of the Goals firmly within the normative framework provided by the Declaration. He offered specific scenarios for what that would entail.

27. In that context, focus should be placed not only on the outcomes that must result from the implementation of the 2030 Agenda, but equally on the processes through which those outcomes must be achieved. That included participation by all stakeholders as well as respecting the policy space of States and their people in determining and implementing their own development priorities. While Goal 17 focused on what was to be achieved, it was only by operationalizing the right to development that focus would be placed on how it was achieved as well. Additionally, operationalizing the right to development meant that development, in order to be sustainable, must not be seen as a charity, a privilege or an expression of generosity, but as a right of human beings everywhere.

28. All States were duty bearers with respect to the right to development. That duty extended to international decision-making, including at the United Nations, the World Bank, the International Monetary Fund and the World Trade Organization. Thus, States would be failing in their obligations if they created international lending policies or multilateral trade rules that were unfavourable to the realization of the right to development. Goal 17 emphasized strengthening the means of implementation through a revitalized global partnership for sustainable development; it was an expression of the duty of States towards international cooperation, enshrined in the Declaration and in the Charter of the United Nations.

29. The operationalization of the right to development also required a comprehensive, multidimensional and holistic approach to development as a human right. That meant that all the Sustainable Development Goals must be aligned with human rights and promote their realization. Furthermore, no goal should be achieved at the cost of any human right, whether substantive or procedural. In that manner, the right to development ensured that there was no trade-off between rights. There was a need to go beyond a human rights-based approach to development, which focused on linking and aligning the objectives of development projects to specific human rights norms, standards and principles. Mr. Kanade argued that a right to development approach went further, making development itself a self-standing human right.

30. Such an approach would require not only that recipients of international cooperation fulfilled their human rights obligations internally through accountable and transparent institutions, but also that donors were duty bound by human rights principles in providing financial or technical aid for the implementation of the 2030 Agenda. That included ensuring that developing countries had the necessary policy space to define their own development priorities and their own mechanisms for implementing them; it also required ensuring that donors refrained from imposing conditions on financial and technical aid which violated national policy space and human rights.

31. Finally, it was important to ensure that the indicators for the Sustainable Development Goals and targets were compatible with the objective of making the right to development a reality for everyone. That included clear, quantifiable indicators for both national and international action, with appropriate benchmarks for each goal, particularly Goal 17. The Sustainable Development Goals should be seen as an expression by States of their individual and collective intention to fulfil their obligations under the Declaration. In

sum, the right to development was the human rights avatar of the Goals while the Goals were the policy expression and plan of action for operationalizing the right to development.

32. Mr. Khor recalled some of the important elements of the right to development. As a human right, every human person and all peoples were entitled to participate in, contribute to and enjoy development in which all rights and freedoms could be fully realized. It was people-centred, since every person and all peoples were the central subject of development and should be both active participants as well as beneficiaries of development. It gave responsibility to each State to take measures to fulfil its people's right to development and required sustained action to promote more rapid development of developing countries, including through effective international cooperation. Thus, it implicitly recognized the imbalances and inequities in the existing international order that hindered countries from implementing the right.

33. There were obstacles to the realization of the right to development at the national and international levels, and Mr. Khor encouraged all stakeholders to identify, diagnose and address them. To that end, it was useful to make use of the practical relevance of the right to development and to elaborate on some of the key global issues of the present time and how they affected its implementation. One issue was the crisis in the global economy. Among other factors, economic sluggishness in developed countries, the plunge in commodity prices, fluctuations in the inflow and outflow of funds as a result of speculative capital flows and fluctuations in the value of currencies owing to lack of a global mechanism to stabilize them had adverse impacts on developing economies. Growth rates had fallen in Africa and elsewhere and some countries were on the brink of another debt crisis.

34. There were also challenges in implementing appropriate development policies, including those related to agricultural production: how to ensure adequate livelihoods and incomes for small farmers along with national food security. Countries that aimed to industrialize faced the challenges of climbing the ladder, from starting viable, low-cost industries to establishing labour-intensive industries to moving up to higher-technology industries. There were also challenges to building a range of services, including health and education, water supply, energy and transport, as well as financial and commercial services. The trend towards liberalization, including as a result of loan conditionality, and towards trade and investment agreements also constrained policy space. In particular, investor-State dispute settlement provisions favourable to foreign investors could entail higher costs for States, constraining their policy-making ability.

35. Climate change was the ultimate example of an environmental constraint to development and the right to development. Statistics had shown that it was imperative to cut global emissions as sharply and as quickly as possible. There was a risk that the burden of addressing this issue would be passed on mainly to developing and poorer countries and to the poor and vulnerable within countries. A global agreement and national agreements to tackle climate change had to be environmentally ambitious, socially fair and economically viable. The Paris Agreement of 2015 showed that it was possible to reach a multilateral agreement on an issue that threatened human survival. However, Mr. Khor warned that the Paris Agreement was not ambitious enough to save humanity, and that it did not demonstrate that the promise of transfers of financing and technology to developing countries would be kept.

36. Antimicrobial resistance was another challenge to the realization of the right to development. Some strains of bacteria had become resistant to multiple antibiotics, and a few had become resistant to all antibiotics. The identification of two genes that had the ability to easily spread resistance to other species of bacteria illustrated the level of danger. The actions needed to confront this challenge included better surveillance of the markets for pharmaceuticals; measures to drastically reduce the overuse and incorrect use of antibiotics,

including control of the unethical marketing of drugs, control of the use of antibiotics in livestock, education of the public, and discovery of new antibiotics. Developing countries required funds and technology, as well as access to existing and new antibiotics at affordable prices.

37. Finally, the challenge of meeting the targets of the Sustainable Development Goals was closely connected with the right to development. However, in the absence of adequate means of implementation, the Goals would remain only noble aims. There was a need for international cooperation in the provision of finance and technology to developing countries; establishing appropriate international rules in trade, finance, investment, intellectual property and technology; and increased sensitivity in policy-making in developed countries. The approach and instruments of the right to development would complement the implementation of the Sustainable Development Goals. In turn, the fulfilment of the Goals would be helpful for the realization of the right to development.

B. Interactive discussion

38. Representatives of the following States took the floor during the discussion: Algeria, Bangladesh, Bolivia (Plurinational State of), Brazil (on behalf of the Community of Portuguese-Speaking Countries), China (on behalf of a like-minded group), Cuba, Dominican Republic (on behalf of the Community of Latin American and Caribbean States), Ecuador, Egypt, El Salvador, Ethiopia, India, Indonesia, Iran (Islamic Republic of) (one statement on behalf of the Non-Aligned Movement, another in its national capacity), Jordan, Malaysia, Namibia, Nigeria, Pakistan, Philippines, Portugal, Saudi Arabia, Senegal, Sierra Leone, South Africa (one statement on behalf of the Group of African States, another in its national capacity), Sri Lanka, Tunisia, United Arab Emirates, United States of America and Venezuela (Bolivarian Republic of). Representatives of the European Union and the Organization of Islamic Cooperation also participated in the discussion.

39. Representatives of the following non-governmental organizations took the floor: Action Canada for Population and Development, Arab Commission for Human Rights, Associazione Comunità Papa Giovanni XXIII in a joint statement,[2] China Society for Human Rights Studies, Indian Council of South America, International Council Supporting Fair Trial and Human Rights, International Youth and Student Movement for the United Nations and ONG Hope International. The following States and governmental and non-governmental organizations were unable to made statements owing to lack of time: Greece, Honduras, Italy, Kenya, Libya, Panama, Paraguay, Singapore, Sudan, Suriname, Syrian Arab Republic, Cooperation Council for the Arab States of the Gulf, China Foundation for Poverty Alleviation and Espace Afrique International.

40. The speakers who took the floor affirmed that the realization of the right to development was a necessity and required political will to ensure a better future for all. The right to development must not be reduced to a secondary right; it must be central to the implementation of the 2030 Agenda and not be limited to the goals of eradicating poverty and ensuring access to adequate housing, among others. A speaker advocated a rights-based approach to sustainable development, with all human rights respected on an equal footing

[2] On behalf of Association points-cœur; Company of the Daughters of Charity of St. Vincent de Paul; Dominicans for Justice and Peace; Order of Preachers; Edmund Rice International; International Movement of Apostolate in the Independent Social Milieus; International Organization for the Right to Education and Freedom of Education; International Volunteerism Organization for Women, Education and Development; Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco; New Humanity; Pax Christi International; and Teresian Association.

and respecting the core principles of non-discrimination, inclusion and participation, transparency and accountability. States, acting individually and collectively as duty bearers, had the primary responsibility to their citizens as rights holders to guarantee that the right to development was realized.

41. Speakers emphasized that achieving the Sustainable Development Goals would require action by all stakeholders, including civil society and the private sector. Looking ahead, the international community must promote a model of sustainable development which was inclusive and collaborative and which respected and promoted the realization of all human rights, ensuring that no one was left behind. In practice, that meant strengthening the United Nations human rights mechanisms and better integrating human rights principles with development efforts. By adopting the Addis Ababa Action Agenda, the international community had committed to financing the 2030 Agenda and to not leaving anyone behind, with significant implications for human rights. The 2030 Agenda would be achieved only if goals were not politicized. The international community needed to eradicate extreme poverty and implement inclusive growth.

42. Speakers stressed the view that the right to development was a comprehensive right that was mutually interdependent on all other rights. To eliminate obstacles to the reform of the political-economic order, the right to development must be recognized as an inalienable right. The 2030 Agenda had been inspired by the Declaration and the obligations therein must be implemented in the spirit of common and shared responsibilities. Human rights mechanisms must give due priority to the realization of the right to development. International cooperation played an essential role in the realization of the right to development and it was therefore crucial to establish a favourable external environment for its realization.

43. A speaker recalled that long before the adoption of the Declaration, the issue of development had already been high on the African agenda. The development of African people rested with African States, and cooperating with each other was necessary to eliminate obstacles to development. Long-term progress towards the implementation of the right to development required effective development policies at the national level, but also needed equitable economic relations and a favourable economic environment at the international level. The international community should also acknowledge its duty to promote effective international cooperation for the realization of the right to development and work constructively towards the elimination of obstacles to development.

44. The Human Rights Council must analyse ways and means for the effective realization of the right to development in the framework of the 2030 Agenda. Thirty years after the adoption of the Declaration, the discussion on whether development was a right must be overcome and attention must turn to the implementation of the obligations under the Declaration. The unanimous adoption of the 2030 Agenda was a crucial step forward in the recognition and realization of the right to development and of all human rights for all human beings in all countries. The 2030 Agenda and the Declaration were based on the principles of the Charter of the United Nations. The right to development was a fundamental right which embodied all other rights, and its universal applicability meant that all States were equally responsible for its implementation.

45. A speaker noted that the current model of development was not sustainable and that collective action by all economies was necessary to reactivate growth, particularly in developing countries, while threats such as inequality, insecurity and lack of peace must be addressed. Respect for the right to development should be expressed in terms of support and assistance, including through multilateral channels, to many countries to promote their development. Several speakers stressed that States had the right and the duty to formulate appropriate national development policies that suited their concrete political, economic,

social and cultural conditions and that the absence of peace, the increase of terrorism and climate change were increasing impediments to the full realization of this right.

46. Developing countries across the world strove to guarantee full realization of the right to development as an inalienable and independent human right by virtue of which all human rights could be fully realized and all people could enjoy economic, social, cultural and political rights. States shared the same desire and ambition to be able to provide adequately for the basic needs of their people, thereby ensuring a dignified life for all. The lack of development opportunities posed a serious threat to the well-being of the citizens of developing countries and contributed to instability and conflict. Without equal development opportunities States could not provide adequately for the housing, health, education and nutritional needs of their people, which increased risks of major setbacks in the face of natural disasters or the outbreak of disease or conflict.

47. Speakers stressed that development was a comprehensive process and that attention should be given to the promotion and protection of all rights equally. All stakeholders were called upon to implement fair strategies based on cooperation. The right to development should be recognized as a separate right and not be incorporated with other rights in the name of mainstreaming. Truly sustainable development depended on Governments following the rule of law, among many other factors, and to ensure successful development, countries had to address discrimination against women, which was a reality recognized in the Sustainable Development Goals.

48. Implementation of the right to development promoted the need for better governance of the international framework. The Declaration was as pertinent at the present time as it was thirty years ago. It was pointed out that history bore the marks of colonialism and slavery and the imposition of an unequal international order, and that since the adoption of the Declaration it had become necessary to promote an enabling environment based on solidarity. A speaker added that development was primarily a political issue, and that some developed countries were seeking to make the right to development relative.

49. A speaker stressed that the Declaration was one of the pillars of the human rights system and had to be developed locally, regionally and internationally. It was recalled that a minority of countries had not joined the consensus when the Declaration was adopted. Despite recent commitments by world leaders, such as the Sustainable Development Agenda, tangible steps had to be taken if the right to development was to be realized. A speaker said that best practices from Latin America could be replicated around the world, and developed countries needed to adhere to the minimum levels of development assistance. The problem of inequality must be approached through the recognition of different stages of development and different approaches and visions for the future.

50. The importance of developing cooperation and partnerships at the international level, establishing adequate policies at the national level and finding resources to implement human development plans was stressed. Additional international efforts were needed to mobilize the resources needed to realize the right to development, and the adoption of the 2030 Agenda had been a step in the right direction; however, it was also necessary to revise the global trade system. A speaker affirmed that the denial of the right to self-determination and the right of countries to govern their own natural resources was among the key obstacles to the realization of the right to development. The Human Rights Council and its mechanisms must ensure that the right to development was mainstreamed in its own work and in the wider United Nations system.

51. A speaker commented that the international community had a duty not to stand in the way of development processes for the most disadvantaged individuals, and expressed regret over the political impasse in the Working Group on the Right to Development. Another stressed that the right to development should be based on the interdependence of

all human rights and that the role of the State had been fundamental in creating a far-reaching set of rights, adding that it was time to translate words into deeds.

52. In their statements, representatives of non-governmental organizations said that the principles of the right to development were found in many instruments and yet remained aspirational and non-implementable. The efforts towards realizing the right to development must not exclude the right to equal participation and consent of indigenous peoples, including the right to say no to certain aspects of development. A speaker asked what measures the international community could propose to allow the Working Group on the Right to Development to overcome its impasse and achieve a binding international instrument.

53. Some speakers advocated the adoption of a binding international instrument on the right to development. Highlighting that the right to development was fundamental in meeting the challenges of our time, they called for the Human Rights Council to formally include the Declaration on the Right to Development in the International Bill of Human Rights. A speaker criticized the practice of some States that had refused to adopt the right to development and only spoke about basic services; other States refused to adopt domestic indicators to measure the right to development and only called for international cooperation. The Addis Ababa Action Agenda and the 2030 Agenda showed that the international community was able to overcome such obstacles.

54. A speaker pointed that the Declaration adhered to the founding human rights principles of the Charter of the United Nations. The right to development was universal and its implementation was necessary in all countries and in all regions in order to ensure that no one was left behind anywhere. It was affirmed in all its dimensions as an inalienable human right, addressing not only the symptoms but the underlying structural causes of poverty, inequality, injustice and discrimination. Both North-South and South-South cooperation were required for its realization. The lack of global awareness of the Declaration and its slow pace of implementation needed to be urgently addressed. The consensus from the World Conference on Human Rights, held in Vienna in 1993, must be honoured with real progress at the Human Rights Council and in the Working Group on the Right to Development.

55. It was stated that the discussions on whether the right to development was a human right did not make the responsibilities of States any less prominent. Since there could be no human rights without addressing human needs, the right to development ought to be fully addressed. A speaker noted that the development of human rights needed a reliable and safe environment. For individuals, the best way to achieve their rights was through the rule of law and legal proceedings.

56. The results in the realization of the right to development were uneven, with many countries finding themselves in a situation of regression and many developing countries crushed under the burden of debt. Speakers expressed disappointment at the delay in the adoption of meaningful criteria and operational sub-criteria for the realization of the right to development in the Working Group on the Right to Development.

C. Responses from panellists

57. The moderator summarized the questions asked during the two rounds of interactive discussion, commenting that most speakers had highlighted the fact that there could be no trade-off between different human rights. The role of both the national and international architecture was paramount to the success of the implementation of the right to development and a human rights-based approach seemed essential, while obstacles to its achievement were recognized. Speakers had raised the issue of including the Declaration on

the Right to Development in the International Bill of Human Rights. The moderator offered the floor to panellists to respond to the issues raised and to make concluding remarks.

58. Ms. Piovesan stated that the Human Rights Council was a strategic and special forum for promoting international cooperation. The 2030 Agenda was characterized by its universality and informed by the same principles as the Declaration on the Right to Development, placing the human person at the centre of development. Transfer of technology was an important aspect to be considered, as it could help developing countries reach higher levels of development. The empowerment of women was an essential condition for advancing the right to development.

59. Mr. McCook addressed the question of traditional knowledge and indigenous peoples, stressing the importance of internal policy dialogue among stakeholders, the use of national legal systems and effectively joining norm-setting processes. To that end, knowledge-sharing should be enhanced by holding seminars, in non-negotiating settings; when negotiations were held, representatives of indigenous groups must be invited to participate to further cement their already strong engagement. The right to development recognized the right of indigenous communities to sovereignty over their national resources. Past doctrines were of the view that some human beings had no rights to property or wealth by virtue of their seeming differences. The legacy of unjust historical conditions must be repaired.

60. Mr. Kanade affirmed that one of the most important roles of the Human Rights Council and the special procedures was to set and strengthen the agenda to promote the right to development not as charity or a privilege granted by donor States, but as a duty. Education was an essential element in this endeavour. The rights-based approach to development tended to focus more on national action, but it needed to give equal consideration to the international aspect as well. Concerning indigenous rights, Mr. Kanade was of the view that the United Nations Declaration on the Rights of Indigenous Peoples explicitly recognized the right to development as an inherent right of all indigenous peoples and entailed an obligation on the part of the State to develop and protect traditional knowledge.

61. Mr. Khor stressed that the Human Rights Council should continue to promote the right to development and take advantage of the thirtieth anniversary to enhance its visibility. A number of working groups were dedicated to key issues, such as the rights of peasants and business and human rights, but action was still lacking. The Council must build a relationship with the bodies of the Secretariat responsible for the promotion and coordination of the implementation of the Sustainable Development Goals, while reconceptualizing and expanding the its role and the role of the Working Group on the Right to Development. Regarding the protection of traditional knowledge, a definition of what constitutes appropriation of traditional knowledge for private gains was needed. An idea to be considered was to limit the possibility of patenting traditional knowledge. States must help indigenous peoples and local communities protect and promote the transmission of traditional knowledge from one generation to the next.

IV. Concluding remarks by panellists

62. After the interactive discussion, panellists were given the opportunity to make concluding remarks.

63. Ms. Piovesan highlighted some of the challenges in realizing the right to development. It was imperative to develop indicators based on sound methodologies, in order to allow for assessments and to shape policies, programmes and measures. The adoption of a binding international treaty on the right to development was essential; to do

this it was necessary to overcome the ideological polarity dividing States. Ratification of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights was also necessary to realize the right to development. International financial institutions should be reformed and trade and technology transfer must be increased. International cooperation and action by private actors for the promotion of human rights was imperative. Lastly, it was necessary to exchange "best practices" for the promotion of a human rights-based approach to the right to development.

64. Mr. McCook affirmed that the international community was clearly able to add a development dimension to the human rights discussion. The question was whether the Human Rights Council could develop a way to enable ongoing assessments of the implementation of the Declaration using its regular processes. The issues raised during the discussion intersected as the relationship between sustainable development and human rights had been addressed in the 2030 Agenda, which was informed by the right to development. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights had very explicit processes (i.e., the respective committees) for reviewing progress in meeting the commitments of the 2030 Agenda and implementing the right to development.

65. Mr. Kanade recalled that the Millennium Development Goals had emanated from the Millennium Declaration, and the 2030 Agenda was also grounded in that declaration. International cooperation included financial cooperation as well as technical cooperation and capacity-building. Development priorities needed to be determined by the recipients. The right to development had been recognized in several United Nations declarations to remind the international community that States needed to define development as a right for everyone. He concurred that the 2030 Agenda had been informed by and grounded in the right to development. The universal periodic review mechanism was an appropriate forum for the evaluation of national and international human rights in the implementation of the right to development.

66. Mr. Khor affirmed that it was important for all businesses to adhere to guidelines on ethical behaviour and to implement those already adopted by the Human Rights Council. If they did not adhere to guidelines, some action must be taken. For example, following the BP oil spill in 2010, the United States was able to require the company to compensate both the authorities and the local people who were affected. However, smaller countries would not necessarily be as able to pursue reparation, because multinational corporations were very powerful and took advantage of transnational escape routes. An international human rights mechanism should therefore be set up to enable victims of human rights violations to seek redress when they were not able to get such redress through national mechanisms.

67. In closing the discussion, the moderator encouraged participants to continue the dialogue within and beyond the Human Rights Council in the collective search for policy recommendations and practical measures for making the right to development accessible to everyone. Mr. Ramadan underlined that the panel discussion had been a reminder of the distinct role and value of the right to development, which provided renewed hope for present and future generations.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Strengthening policies and programmes for universal birth registration and vital statistics development

Report of the High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 28/13, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a report on efforts made with regard to strengthening existing policies and programmes aimed at universal birth registration and vital statistics development. The report provides a summary of international legal obligations and implementation status, followed by an overview of key considerations in relation to human rights-based monitoring and implementation. It then takes stock of relevant activities undertaken by the Office of the United Nations High Commissioner for Human Rights and partners to strengthen universal birth registration and vital statistics.

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I. Introduction

1. In its resolution 28/13, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a report on efforts made with regard to strengthening existing policies and programmes aimed at universal birth registration and vital statistics development, including to ensure that they were based on international standards, taking into account best practices, and were implemented in accordance with relevant international human rights obligations, and to submit it to the Human Rights Council at its thirty-third session. That resolution built on Council resolution 22/7, in which it requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the legal, administrative, economic, physical and any other barriers to access to universal birth registration and possession of documentary proof of birth, as well as on good practices adopted by States in that regard.[1]

2. Pursuant to Human Rights Council resolution 28/13, the present report provides a summary of relevant international obligations and implementation status, followed by an overview of key considerations in relation to human rights-based monitoring and implementation, including in relation to the 2030 Agenda for Sustainable Development. It then provides a stocktaking of the activities undertaken by OHCHR and partners to strengthen policies and programmes aimed at universal birth registration and vital statistics development.

3. Birth registration and the right of everyone to recognition as a person before the law are recognized as fundamental human rights, on the basis of the Universal Declaration of Human Rights, and as elaborated across a number of conventions and other relevant international instruments. As birth registration establishes the recognition of a person before the law, the registration of all children immediately after birth is fundamental to the protection and realization of all human rights. When children are not registered at birth, they are at risk of being deprived of other rights throughout their lives, including the right to citizenship, health, education and social welfare. Children who are not registered at birth also face increased vulnerability to marginalization, exclusion, discrimination, violence, statelessness, exploitation and abuse, including in the form of child labour, trafficking and child marriage. Moreover, the sound management of well-functioning civil registration and vital statistics systems is an important contributor to accountability and good governance within the State.

4. States must undertake due efforts to fulfil their obligation to ensure universal birth registration as part of well-functioning civil registration systems. Progress in this regard has been uneven, with evidence of substantial gaps in civil registration rates within and between countries. States must ensure that civil registration systems and vital statistics reflect the situation of all members of the population, regardless of their race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Special measures are needed to ensure birth registration, proof of identity and vital statistics for people living in situations of emergency and other vulnerable situations.

[1] That report was issued as document A/HRC/27/22.

II. Birth registration and vital statistics development

A. International legal obligations

5. As stated in article 6 of the Universal Declaration of Human Rights, everyone has the right to recognition everywhere as a person before the law. As the first step to establishing the recognition of a person before the law, birth registration is the principal foundation for the fulfilment of this right, and of the rights to which all persons are entitled throughout their lives. Birth registration is a fundamental right recognized in article 24 of the International Covenant on Civil and Political Rights, which states that every child shall be registered immediately after birth. The Human Rights Committee has specified the link between that article and the provision on the right to special measures of protection, and that the main purpose of birth registration is "to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant."[1]

6. Birth registration is also recognized as a right under article 7 of the Convention on the Rights of the Child, which provides that, in addition to their right to be registered immediately after birth, all children have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents. In accordance with the general principle of non-discrimination contained in the Convention, States must fulfil the right to birth registration without discrimination of any kind, including on the basis of the child's or his or her guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. All children should have access to birth registration in the country where they are born, including non-nationals, asylum seekers, refugees and stateless children.[2] As per article 8, when a child is illegally deprived of some or all of the elements of his or her identity, States parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

7. The importance of birth registration and the impact of non-registration on the enjoyment of the rights of the child are acknowledged by the Committee on the Rights of the Child by way of general comments (see A/HRC/27/22). Lack of registration and a birth certificate heightens the risk for a child later in life of entering into early marriage, or into the labour market or the armed forces before the legal age. As per the Committee's general comment No. 7, children lacking a birth certificate and related identity documents are also at risk of being denied their other basic rights, including the rights to health, education and social welfare services. The Committee recommends that States take all necessary measures to ensure that all children are registered at birth through a universal, well-managed registration system that is accessible to all and free of charge.

8. The right to birth registration and legal identity is further reflected in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 29) and the Convention on the Rights of Persons with Disabilities (art. 18). In adulthood, birth certificates may be required to obtain formal sector employment, to buy or prove the right to inherit property, to vote and to obtain a passport. Non-registration therefore undermines fulfilment of the rights of all persons, inter alia, to vote (International Covenant on Civil and Political Rights, art. 25), the right to a nationality (Universal Declaration of Human Rights, art. 15) and the right of everyone to be free to

[1] Human Rights Committee general comment No. 17 on the rights of the child, para. 7.

[2] Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF, 2007), p. 97.

leave any country, and not be arbitrarily deprived of the right to enter their own country (International Covenant on Civil and Political Rights, art. 12).

9. The right to birth registration is also addressed in both international refugee law and international humanitarian law,[4] including in the conclusions on international protection of the United Nations High Commissioner for Refugees of 17 October 2013. The conclusions emphasize the importance of birth registration in relation to refugees, asylum seekers and stateless persons, and outline how a lack of civil registration and related documentation makes persons vulnerable to statelessness and associated risks.

10. The obligation for States to ensure that all marriages are registered in an appropriate official register is stipulated in the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. The obligation to register deaths is implicit in article 12 (2) (a) of the International Covenant on Economic, Social and Cultural Rights, which stipulates that necessary measures to realize the right to health include "reduction of the still-birth rate and of infant mortality", as the information necessary to monitor these mortality rates is available only from a State's register. The obligation to register deaths is also implicit in the realization of other human rights, including rights concerning property, inheritance and social security, and the right to remarry after the death of a spouse.

B. Implementation progress

11. According to the United Nations Children's Fund (UNICEF), the average rate of birth registration has been increasing moderately in recent years, from approximately 58 per cent in 2000 to 65 per cent in 2010.[5] In 2015, 123 countries reported having a birth registration service within a civil registry which was free, continuous or permanent, accessible, universal in coverage, timely and accurate. This reflects an increase from 114 countries in 2014. However, it is of great concern that the births of nearly one fourth of the global population of children under 5 have never been registered.[6] The largest gaps in absolute terms persist in Asia, which accounts for 59 per cent of the global gap, followed by sub-Saharan Africa, which accounts for 37 per cent.[7] Nonetheless, certain countries within South Asia and East and Southern Africa have made significant gains in registration rates in recent years.[8]

12. On the basis of disaggregated data available on birth registration rates worldwide, questions of equality and non-discrimination have become central to the implementation of universal birth registration. Rates of registration continue to vary greatly within and between countries — with the highest reaching 100 per cent, and the lowest merely 5 per cent.[9] In countries where registration rates have improved and reached high levels overall, children from the poorest households are still twice as likely to be unregistered as those from the richest.[10] Moreover, implementation experience reflects that the children who are most marginalized and discriminated against are those who remain unregistered and uncounted. Even when countries reach registration rates as high as 70-90 per cent, it is the

[4] See the Convention on the Reduction of Statelessness, arts. 1-6, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 50.

[5] UNICEF, Annual Results Report 2015.

[6] http://data.unicef.org/child-protection/birth-registration.html#:sthash.L8LQ0bX1.dpuf.

[7] UNICEF, "Every child's birth right: inequities and trends in birth registration" (New York, 2013), p. 15.

[8] UNICEF, Annual Results Report 2015.

[9] Ibid.

[10] UNICEF, *Progress for Children: Achieving the MDGs with Equity*, No. 9 (September 2010), p. 45.

most vulnerable and marginalized children who are not being registered, including children with disabilities, children from an indigenous minority groups, and children from families who have been displaced, are stateless or have refugee status. For example, a lack of registration persists among children from the Roma community in Central and Eastern Europe and the Commonwealth of Independent States, indigenous children in the Latin American and Caribbean region, and stateless children across regions, such as in Europe and in Africa.[11]

13. There is a dearth of reliable information on global implementation of civil registration aside from birth registration. Nonetheless, on the basis of the available global data in this regard, the United Nations Statistics Division notes substantial overall deficiencies in civil registration systems.[12] One recent assessment based on composite data found that from 2005 to 2009 only 36.2 per cent of total estimated global deaths were registered, and that since 2000 there has been an improvement of approximately only 2 per cent in global rates of death registration.[13] While most countries do gather civil registration information and generate vital statistics, the degree, quality and regularity of this varies greatly. In less developed countries, civil registration systems tend to be weak and comprised of incomplete and unreliable information. Moreover, refugee, stateless and permanently displaced children are rarely captured in surveys or in national population censuses.

III. A human rights approach to monitoring and implementation of obligations

A. Challenges to implementation

14. All children should be registered immediately after birth, or as soon as possible after birth. The fulfilment of the right to birth registration is closely linked to the realization of other rights, including the rights of the child. A birth certificate has further implications throughout the course of life, and may be necessary to obtain a passport and other legal documents, to enrol in education, to marry, to secure inheritance and property rights or to secure formal employment. In some countries, it may be needed to obtain a driver's licence, to open a bank account, to access social security or to obtain insurance or financial credit. Birth registration is also the primary basis for establishing nationality and the rights and responsibilities of citizenship, including the right to vote and to participate in political life. Moreover, non-registration places children at heightened risk of becoming victims of trafficking, or of entering into marriage, the labour market, or the armed forces before the legal age, and unequal access to birth registration exacerbates existing inequalities, discrimination and vulnerability. Yet, the uneven progress towards implementation outlined above reflects the persistence of barriers to the realization of universal birth registration, and the fact that substantial gaps in registration rates within and between countries primarily represent those most marginalized and in situations of vulnerability, who remain invisible from vital statistics.

15. It is important to take account of the barriers contributing to this situation from a human rights perspective. Many countries face difficulties in ensuring access to civil

[11] UNICEF, Annual Results Report 2015.

[12] http://unstats.un.org/unsd/demographic/CRVS/CR_coverage.htm.

[13] Lene Mikkelsen and others, "A global assessment of civil registration and vital statistics systems: monitoring data quality and progress" in *The Lancet*, vol. 386, No. 10001 (3 October 2015), pp. 1395-1406.

registration for geographically remote or otherwise isolated communities. Underdeveloped public transport and infrastructure, the costs of transport, and the time required away from daily work to reach registration facilities are pervasive challenges in this regard. Civil registration costs greatly limit access where fees levied exclude people on the basis of their ability to pay. These may include official fees defined on the part of the State, and fees imposed illegally by registrars. In addition, fines for late birth registration may act as a disincentive to registration or make the costs unaffordable. Where the prerequisite documentation required for registration is excessive or impossible to obtain, this poses a further impediment. Moreover, where laws or penalties are in place to restrict the number of children allowed per family, parents may avoid registering those born over and above the allocated number, for whom discrimination and the human rights risks outlined above are greatly exacerbated.

16. Social accessibility is equally important, and in some contexts people are excluded from registration processes due to their language abilities or literacy levels. A lack of awareness among the general public on the rights and benefits associated with civil registration poses a major obstacle. Parents and communities may view registration as a legal formality of second-order importance in relation to other challenges. This is particularly the case for those living in poverty and situations of vulnerability, and in places where fees are imposed for registration or certification. They may only become aware of the right to register a child when facing related barriers to accessing health or education services. Awareness-raising of the rights and benefits of registering births and other vital events is fundamental to the development of civil registration systems.[14] Children with disabilities are overrepresented among those who are not registered, often due to reluctance on the part of their parents or families to do so. This in turn limits their access to essential services and places them at heightened risk.[15]

17. The registration of refugees and asylum seekers provides important information to State administrations, and ultimately, where appropriate, may facilitate repatriation. However, in some countries there is a lack of political will to register the births and other vital events of refugees and asylum seekers, or children whose parents are not citizens or are not in possession of their own identity documents due to their migration or other status. Discriminatory policies and practices in this regard prevent these children and their families from accessing associated rights and exacerbate their marginalization. Moreover, children in such situations are at risk of being left stateless if they are unable to prove their nationality.

18. Gender discrimination undermines birth registration in countries that allow only men to register a child, or that refuse registration in the absence of the father or both parents. This poses a particular risk for children born out of wedlock or as a result of rape, and for children whose fathers or other male heads of household do not consent to their registration.[16] Some countries do not allow women to confer their nationality on their child; if the father does not acknowledge the child, they are then at risk of being left stateless.

19. Of particular concern are the barriers faced in registering the births of children from non-traditional family arrangements, who may be stigmatized, criminalized or not recognized. These include children born to sex workers, women accused of witchcraft and same-sex couples, along with those born with albinism, to name a few. Due to the acute

[14] UNICEF, "Every child's birth right", p. 20.

[15] See Committee on the Rights of the Child general comment No. 7 (2005), on implementing child rights in early childhood, para. 25.

[16] Plan International, "Mother to child: how discrimination prevents women registering the birth of their child" (March 2012), p. 9.

stigma faced in these contexts, parents often do not disclose the birth of children in order to protect their offspring. Special measures must be put in place to address these real and serious concerns.

20. In situations of armed conflict, natural disaster and other emergencies, civil registration may be disrupted, and existing barriers to registration tend to be exacerbated. Populations may be displaced within or beyond State borders, causing problems with regard to retrieving vital documents and continuing to register vital events. Moreover, civil records may be destroyed due to natural disasters and other emergencies, particularly where civil registration systems are not digitized.

21. The fulfillment of universal birth registration also strongly relies upon its implementation as a part of well-functioning civil registration and vital statistics systems. Civil registration systems officially register vital events, including births, deaths and causes of death, adoptions, marriages and divorces. Well-functioning civil registration and vital statistics systems provide the best source of continuous, reliable and universal national data about the vital events of the population. They are also essential to the fulfilment of core obligations of the State, including the progressive realization of human rights, as vital statistics about the population are necessary for effective planning of development policies and programmes, including public services. Moreover, information from civil registration systems can be crucial to identifying, monitoring and remedying human rights abuses against certain individuals or groups within a country, whereas a lack of data on births and deaths concentrated among specific population groups has resulted in the systematic underestimation of child mortality among these groups.[17]

22. Yet, some countries still do not acknowledge the importance of well-functioning civil registration systems to development. In some cases, civil registration has been used to control the population or as a tool for persecution, seriously affecting public trust in the State. Civil registration laws and procedures are often outdated, failing to reflect the present realities and information needs, and inadequate capacity and resource allocations pose a significant barrier to the development of civil registration systems in many countries. For example, inadequate resources can lead to non-registration due to inadequate registration stationery and supplies. Countries also highlight the capacity challenges of insufficient staffing, inadequately trained staff, deprioritization of registration activities by low-paid officials and problems of fraud and corruption.

B. Priorities to support universal registration

23. Realizing the right to birth registration for all children requires that registration be available and accessible for all. Special measures must be undertaken to ensure access for those children most at risk, marginalized and living in situations of vulnerability, particularly children from minority groups, children with disabilities, children from indigenous communities and stateless children. Effective implementation strategies for achieving universal registration have involved improvements in the enabling environment, including the introduction of laws and policies to support and implement registration within an equitable legal framework, increasing infrastructure for improved registration services and training personnel.[18] Interoperability has been particularly effective in promoting access to civil registration services, whereby such services are provided via existing health or other public service facilities.

[17] Ibid., p. 11.

[18] UNICEF, "A passport to protection: a guide to birth registration programming" (New York, 2013).

24. To realize universal birth registration, unreasonable documentation requirements and all registration fees should be removed, birth certificates should be provided free of charge, and fees or penalties for late registration should be waived. Registration forms and materials should be provided in minority languages and in a comprehensible format. Awareness-raising among children, their parents or guardians, and communities (especially among community leaders) about the rights and benefits associated with birth registration is essential to achieving behaviour change, and parents or guardians should be made aware of their responsibility to register children. Moreover, access to essential services and entitlements should not be conditional on being registered or in possession of a birth certificate.[19]

25. The potential risk to privacy and the obligation of protection from discrimination and harm must be taken into account in determining the information included in a birth certificate. As such, the minimum information should be reflected on the birth certificate, and details that may pose a risk should be omitted, such as those concerning race, ethnicity, religion and parents' marital status. The minimum information that should be recorded in a birth registration is the child's name, gender, and date and place of birth, along with the parents' names and addresses and the parents' citizenship. To prevent discrimination, it should not be mandatory to record the father's name and details.[20]

26. Moreover, States must prioritize the development of well-functioning civil registration systems that provide free and universal recording of vital events among the population. Civil registration should be sustainable, continuous, permanent, compulsory and universal, with records being kept securely by Governments, in a form that cannot easily be destroyed, and which may be retrieved by an individual at any stage of his or her life. The use of new technologies to expand vital event notification has shown promising results, and can mitigate the risk of permanent loss of civil records, which is a risk in the case of emergencies or natural disasters.[21] Sensitive information obtained through birth registration or other civil registration processes that may be used to discriminate against an individual, such as ethnicity, race, religion or other factors relevant in a given context, should be kept confidential by law.

27. The maximum available resources should be allocated for the development of civil registration and vital statistics. While external funding can provide much-needed support, it is crucial that civil registration and vital statistics be developed in a manner that is continuous and permanent, through national ownership and the long-term allocation of public funding.

C. Role of birth registration and vital statistics in the implementation of the Sustainable Development Goals

28. In the 2030 Agenda for Sustainable Development, States emphasized that the Sustainable Development Goals were to be implemented in a manner consistent with

[19] Hodgkin and Newell, Implementation Handbook for the Convention on the Rights of the Child, p. 100; and Committee on the Rights of the Child general comment No. 7, para. 25.

[20] UNICEF, "A passport to protection".

[21] Countries considering the introduction of information and communications technologies to civil registration systems should take account of the relevant core guidelines available. See UNICEF and Inter-American Development Bank, "Toward universal birth registration: a systemic approach to the application of ICT", Mia Harbitz and Kendra Gregson, eds. (2015), and the civil registration and vital statistics digitization guidebook developed under the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics Systems partnership initiative (www.crvs-dgb.org).

international law, and called for leaving no one behind and for more systematic monitoring and data collection to help measure progress towards achieving the goals. Global agreement on the Agenda therefore represents an important opportunity to intensify efforts to strengthen universal birth registration and vital statistics development. It will support global efforts in this regard primarily on the basis of target 16.9, in which Governments committed to "by 2030, provide legal identity for all, including birth registration", as well as proposed indicator 17.19.2 under Goal 17 on partnerships, to monitor the proportion of countries having achieved 100 per cent birth registration and 80 per cent death registration.[22]

29. Global data reflect the fact that, while it is possible to bring about substantial overall progress, the remaining unregistered children are frequently those who are most vulnerable and marginalized.[23] A focus on ensuring that no child is left behind, through an emphasis on targeted measures to ensure universal registration of all children, will therefore be crucial to the achievement of target 16.9.

30. The development of comprehensive civil registration systems to gather accurate, timely, disaggregated data is vital to inform decision-making, programming and planning, and therefore to the overall implementation of the 2030 Agenda. Well-functioning civil registration systems are essential to bring about accountability for the implementation of the 2030 Agenda, as they can provide the most reliable basis for monitoring multiple Sustainable Development Goal targets. Disaggregated, reliable vital statistics are also crucial to cast light on disparities in outcomes for specific groups, and can thereby support greater equity and targeting of programmes to ensure that no one is left behind.

31. A number of Sustainable Development Goal targets are particularly dependent on birth registration or the existence of well-functioning civil registration and vital statistics systems. Birth registration and vital statistics are fundamental to the delivery and monitoring of targets under Goal 16, on promoting peaceful and inclusive societies, including to significantly reduce all forms of violence and related death rates everywhere (target 16.1); to end abuse, exploitation, trafficking and violence against and torture of children (target 16.2); to develop effective, accountable and transparent institutions (target 16.6); and to ensure responsive, inclusive, participatory and representative decision-making (target 16.7). They are also essential in relation to the implementation and monitoring of Sustainable Development Goal targets reflecting economic, social and cultural rights. For example, reliable, disaggregated data on mortality and causes of death are necessary to monitor progress towards achieving health-related targets under Goal 3 (maternal and child mortality, addressing communicable and non-communicable diseases, and universal health coverage). The implementation of targets under Goal 1, on ending poverty, and Goal 4, on inclusive and equitable education, is dependent on birth registration in countries where birth certificates and associated identity documents are needed to access public services and benefits.

32. The fulfilment of universal birth registration is further relevant to preventing and reducing risks of statelessness, human trafficking, child and early marriage, and child labour (Goal 5, on gender equality; Goal 8, on decent work and economic growth; and Goal 16), to support the protection and rights of refugees and others affected by disasters, including by documenting links to country of origin, and through provision of information crucial to humanitarian planning and disaster management and response (Goal 11, on cities and human settlements).

[22] See General Assembly resolution 70/1.

[23] UNICEF, Annual Results Report 2015.

33. An integrated approach involving all relevant stakeholders, and incorporating civil registration and vital statistics into relevant global, regional and national development plans, is needed. Partnership cooperation at all levels, as defined under Sustainable Development Goal 17 targets on the means of implementation, is crucial in terms of the technical, capacity and financial support needed to strengthen civil registration and vital statistics.

D. Leaving no one behind: a human rights-based approach to monitoring

34. In order to bring about accountability for delivering on the commitments contained in the 2030 Agenda, particularly leaving no one behind and reaching those furthest behind first, effective strategies for monitoring and data collection need to be in place at all levels. The importance of an approach to monitoring and analysis that reveals the situation of all individuals and groups within a country cannot be overemphasized, to close inequities in outcomes and gaps in data coverage between different groups of the population. In response to the promise that no one will be left behind, and related 2030 Agenda commitments to equality, monitoring and review, there has been a strong drive to improve the availability and quality of data, by way of greater data disaggregation and a "data revolution". This provides a key opportunity to strengthen civil registration and vital statistics as a reliable source of data to reflect the situation of all groups of the population.

35. The commitment to improved and disaggregated data also offers an opportunity to expand a human rights approach to data. However, at the same time, it poses challenges for the protection of human rights. In accordance with international legal obligations, the monitoring and review process should be carried out on the basis of a human rights approach throughout the data collection process, and in relation to data disaggregation. This requires implementation of the core human rights principles and standards identified by OHCHR and partners in this respect, which include: (a) participation, (b) disaggregation, (c) self-identification, (d) transparency, (e) privacy and (f) accountability.[24]

(a) Participation is instrumental to the realization of all components of a human rights-based approach to data, and to retaining trust in official and other relevant data and statistics. All data collection exercises should include means for the free, active and meaningful participation of relevant stakeholders, in particular the most marginalized population groups. Participation should be considered in relation to the entire data collection process, from strategic planning through to data collection, storage, analysis and dissemination. In some contexts, to ensure the protection of groups who may be uncomfortable or threatened by the data collection, civil society organizations, national human rights institutions and other relevant stakeholders should participate insofar as they are competent to represent the groups' interests;

(b) Data disaggregation is a human rights obligation, a commitment in the 2030 Agenda and a need that is recognized in national statistics systems. It is essential to reveal and enable assessment of inequality and discrimination. A human rights approach in this regard requires focusing on the most disadvantaged or marginalized groups, and on inequalities within the population. Capacities and partnerships should be developed to support States in collecting and publishing data disaggregated by grounds of discrimination recognized in international human rights law, which include sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity. Data disaggregation is not a value-neutral exercise, and the associated risks must be addressed. A human rights approach requires that efforts to improve the quality and

[24] These principles are further elaborated in OHCHR, "A human rights-based approach to data".

use of disaggregated data be consistent with the protection of the right to privacy. A participatory approach and the principle of self-identification can help improve response rates among "hard-to-count" or marginalized populations, and is particularly relevant for those who are discriminated against or excluded from traditional household surveys or administrative records (e.g. homeless persons or migrants). In some contexts, civil society organizations and service providers are best placed to reach these populations and collect data. Decisions concerning collection of data on particularly vulnerable or marginalized groups, including, "legally" invisible groups, for instance, should be made in close partnership or consultation with the group concerned to mitigate associated risks. The registration of children immediately after birth has an impact on the statistical system's capacity to disaggregate data, and is instrumental for the accuracy of vital statistics and the sampling design of surveys;

(c) Self-identification is an essential principle in relation to the identity of an individual or population group, relevant to data collection and the categorization of populations in statistics. Respect for and protection of personal identity is central to human dignity and human rights, and the overriding principle of doing no harm must be respected. Whether it is necessary to include personal identity issues in data collection exercises should be carefully assessed. Data collection exercises should not create or reinforce discrimination, bias or stereotypes against population groups, and any objections by these populations must be taken seriously by data producers. When a survey includes questions on personal identity, those conducting interviews should receive gender and cultural awareness training, including on possible issues of historical legacy;

(d) Transparency, or the "right to information", is central to realization of freedom of expression as specified in international human rights treaties, and plays a key role in a democratic society and in the population's entitlement to public information.[25] Access to information on inequality among population groups is also important for civil society and other stakeholder groups to monitor the realization of human rights more generally. Fulfilment of the right to information in the production of statistics means that civil society organizations should be able to publish and analyse statistics without fear of reprisal, and should also seek to comply with international human rights and statistical standards for their own data collection, storage and dissemination of statistical information;

(e) The right to privacy and data protection should be balanced with that of access to information. Increased use of big data and demand for data disaggregation present a challenge to the protection of these rights, as acknowledged in the call for a data revolution.[26] Personal data, including but not limited to data on ethnicity, sexual orientation, gender identity or health status, should be handled only with the express consent of the individual concerned. Data collected to produce statistical information must be strictly confidential, used exclusively for statistical purposes and regulated by law, in accordance with the International Covenant on Civil and Political Rights. Data should not be published or publicly accessible in a manner that permits identification of individual data subjects, either directly or indirectly, and should be secured against both natural and human dangers;

(f) In the context of the human rights approach to data, accountability refers to data collection for accountability, as well as accountability in data collection. As State institutions, national statistical offices are human rights duty-bearers with an obligation to respect, protect and fulfil human rights in their daily exercise of statistical activities.

[25] As outlined in the Fundamental Principles of Official Statistics.

[26] See "A world that counts", report prepared by the Independent Expert Advisory Group on a Data Revolution for Sustainable Development (2014). Available from www.undatarevolution.org/wp-content/uploads/2014/11/A-World-That-Counts.pdf.

Independent statistics, free from political interference, are fundamental tools to inform and hold those in power accountable for their policy action (or inaction) through measuring their impact on the protection and realization of human rights. Appropriately anonymized microdata, including relevant and disaggregated indicators, should be made publicly available to stakeholders to facilitate accountability.

IV. Stock-taking of relevant activities undertaken by the Office of the United Nations High Commissioner for Human Rights and partners

36. The activities of OHCHR in relation to birth registration and vital statistics development have primarily been undertaken as part of its strategic priority to strengthen the integration of human rights in the formulation and monitoring of the 2030 Agenda for Sustainable Development. In this context, OHCHR has undertaken activities in three core areas contributing to the strengthening of global policies and programmes addressing universal birth registration and vital statistics development: (a) the development of global guidelines on a human rights-based approach to data and monitoring to ensure that no one is left behind in the implementation of the Sustainable Development Goals; (b) contributions to the 2030 Agenda for Sustainable Development goals, targets and indicators; and (c) partnership activities relevant to the strengthening of birth registration and vital statistics.

A. Global guidelines on a human rights-based approach to data and monitoring

37. OHCHR has supported uptake of global norms on a human rights-based approach to data and monitoring through the development of a guidance note on a human rights-based approach to data,[17] recognized by chief statisticians from several countries, United Nations agencies and civil society organizations as useful in the work on data collection and disaggregation for the Sustainable Development Goals, and deemed consistent with the Fundamental Principles of Official Statistics. Moreover, the normative approach reflected in the guidance note serves as an essential basis for supporting a human rights approach to birth registration and vital statistics.

38. Extensive engagement has also been undertaken with partners to expand uptake of a human rights approach to data. For example, OHCHR organized a side event entitled "Leaving no one behind: how human rights guidance can help solve the Sustainable Development Goal data disaggregation puzzle" on 9 March 2016, which was attended by 35 representatives of United Nations agencies, non-governmental organizations, national statistical offices and missions.[18] A human rights approach to data was further highlighted through OHCHR participation in the events held in observance of World Statistics Day in October 2015. In addition, public engagement was undertaken to strengthen awareness of a human rights approach to data among civil society and other stakeholders, through online communications and several further events on the topic.[19] The guidance note mentioned above has also been included in the United Nations portal on human rights-based

[17] See OHCHR, "A human rights-based approach to data", guidance note (2016). Available from www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf.

[18] For more information, see www.ohchr.org/EN/NewsEvents/Pages/DataForSustainableDevelopment.aspx.

[19] For more information, see www.ohchr.org/EN/NewsEvents/Pages/WorldStatisticsDay2015.aspx.

approaches to programming, which supports United Nations practitioners on such approaches.[10]

39. Through OHCHR technical work and engagement with stakeholders on the importance of human rights in monitoring and data management, this approach has gained increasing support from national and international stakeholders, including statistical organizations, national human rights institutions and civil society. This is reflected, for example, in the Merida Declaration on the role of national human rights institutions in implementing the 2030 Agenda for Sustainable Development, adopted in October 2015 by the Twelfth International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, and in outcomes of key events of the statistical community to which OHCHR provided contributions, including the meeting of the Conference of European Statisticians in Geneva; the meeting of the World Statistics Congress in Rio de Janeiro, Brazil; the session of the United Nations Statistical Commission held in New York; and the meetings of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators in New York and Bangkok.

40. OHCHR has engaged in related milestones in the process of defining the 2030 Agenda, including the 2014 report of the Secretary-General's Independent Expert Advisory Group on a Data Revolution for Sustainable Development, which called for a data revolution grounded in human rights to monitor implementation of the 2030 Agenda. In addition, OHCHR has received and responded to numerous requests from statistical offices on capacity-building in human rights-based approaches to data for monitoring progress towards achieving the Sustainable Development Goal targets.

B. Contributions to Sustainable Development Goals, targets and indicators

Sustainable Development Goals and targets

41. OHCHR provided substantive input on the development of Sustainable Development Goals and targets from early on in the process of defining the 2030 Agenda. In this respect, OHCHR has engaged with United Nations agencies, civil society and Governments to help define substantive priorities to address civil and political rights, including the parameters of Goal 16 and target 16.9, on birth registration and legal identity. OHCHR support for the elaboration of Goal 16 targets focused on strengthening their alignment with civil and political rights encompassing personal security, fundamental freedoms and accountability. This involved technical inputs on the inclusion of the right to legal identity through birth registration, as reflected in the 2013 joint publication by OHCHR and the Center for Economic, Social and Cultural Rights entitled *Who Will be Accountable?*. In that report, the need for a target addressing birth registration was clearly identified, on the basis that a birth certificate was the official record of an individual's existence and his or her recognition as a person before the law.[11]

42. In 2013, in partnership with the United Nations Development Programme (UNDP), OHCHR conducted global and regional thematic consultations on governance, with the input of all stakeholders, to further define how this theme could be effectively integrated into the Sustainable Development Goal framework.[12] Among others, OHCHR served as a member of the advisory group for the global consultations on addressing inequalities that

[10] http://hrbaportal.org/resources/a-human-rights-based-approach-to-data-leaving-no-one-behind-in-the-2030-development-agenda

[11] OHCHR and Center for Economic, Social and Cultural Rights, *Who Will be Accountable?* (2013), pp. 85-90. Available from www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf

[12] www.worldwewant2030.org/governance

was co-led by UNICEF and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), contributing to increased understanding of equality as a fundamental human right and non-discrimination issue.[13]

43. Subsequently, OHCHR continued to provide contributions throughout the process to define the 2030 Agenda via the United Nations Technical Support Team, to ensure that a human rights approach was reflected in Goal 16 targets, and that a target on providing universal legal identity through birth registration was included. During the negotiation process, OHCHR provided support for the drafting of the Sustainable Development Goals, and technical input was supplied, where requested, to support member State positions on the draft agreement. OHCHR also engaged in further collaboration with civil society, the United Nations system and other partners on the substance of Goal 16, for example through the Virtual Network on Indicators for Sustainable Development Goal 16, led by UNDP, and the Praia Group on Governance Statistics under the auspices of the United Nations Statistical Commission.

Indicators

44. OHCHR has worked to support the development of Sustainable Development Goal indicators that incorporate key human rights considerations, and to ensure the inclusion of indicators to support the realization of universal legal identity. OHCHR develops policy and practical guidance, provides technical advice and conducts training activities on human rights indicators, to support national and international stakeholders in measuring and monitoring the implementation of human rights standards. OHCHR has also participated consistently in the work of the international statistical community to develop indicators for monitoring the Sustainable Development Goals, with a view to strengthening human rights approaches to measurement using statistical methods and tools.

45. The input of OHCHR to the development of indicators to monitor progress under Goal 16 targets has been extensive. For example, OHCHR proposed the inclusion of an indicator on monitoring target 16.9 to the United Nations Technical Support Team, the head of chief statisticians of the United Nations system, and the Virtual Network on Indicators for Sustainable Development Goal 16, and in the global list of indicators compiled by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators.[14] This indicator (16.9.1) on the "proportion of children under 5 years of age whose births have been registered with a civil authority, by age", has now been included in the global list of indicators endorsed by the United Nations Statistical Commission.[15] OHCHR subsequently prepared metadata for this indicator in consultation with national statistics offices, United Nations agencies, civil society organizations and other relevant stakeholders.

46. As part of its efforts to integrate human rights considerations into the list of indicators agreed to monitor progress on the Sustainable Development Goals, OHCHR has undertaken substantial engagement with the United Nations Statistical Commission and with the wider statistical community, for example, by participating in the 2016 session of the Statistical Commission, which involved chief statisticians from member States, and through its membership on the steering committee of the Praia Group on Governance Statistics, a key forum through which to advance indicators related to governance and indicators related to monitoring target 16.9, on birth registration. The substantive input of OHCHR during the processes to define the 2030 Agenda goals, targets and indicators, as

[13] www.worldwewant2030.org/inequalities.

[14] See E/CN.3/2016/2/Rev.1, annex IV.

[15] The Statistical Commission, in its decision 47/101, agreed with this list of indicators as a practical starting point, subject to future technical refinement. See E/2016/24-E/CN.3/2016/34, chap. I.B.

outlined above, has been crucial to strengthening global norms on the importance of the right to legal identity and to birth registration, as well as their eventual inclusion in the Sustainable Development Goal targets and indicators framework.[36]

C. Partnership activities

47. United Nations, regional and civil society partners have made important contributions to strengthen birth registration and vital statistics, taking into account human rights considerations, both in collaboration with and independently of OHCHR. The United Nations Statistics Division, UNICEF, the World Health Organization and the United Nations Population Fund (UNFPA) undertake extensive activities related to the development of civil registration and vital statistics worldwide. These include a range of global, regional and national activities, for example, in the form of knowledge management, the development of standards and methods, monitoring and technical reports on the status of civil registration and vital statistics, and expert group meetings and workshops. UNICEF carries out comprehensive country programmes to support universal birth registration, with a focus on strengthening coverage of the most vulnerable and marginalized children. It works extensively with Governments in this regard to improve legal frameworks, enhance interministerial cooperation, build human capacity and infrastructure, and encourage innovation and development of information and communications technologies for improved civil registration and vital statistics.

48. Working in partnership with international and regional organizations through the Global Civil Registration and Vital Statistics Group, United Nations agencies seek to strengthen international cooperation and alliances for civil registration and vital statistics development in recognition of their value to human rights, good governance, and development planning, monitoring and evaluation.[37] Among various activities in this regard, United Nations agencies are working in collaboration with partner countries and stakeholders on the Global Financing Facility to accelerate progress in maternal and child health, which specifically addresses the implementation of civil registration, including through intersectoral and inter-agency contributions to regional initiatives. Key regional initiatives have included the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics, and the Regional Strategic Plan for the Improvement of Civil Registration and Vital Statistics in Asia and the Pacific. These initiatives have facilitated the engagement of a broad range of stakeholders in the development pf civil registration and vital statistics, in partnership with the Economic and Social Commission for Asia and the Pacific and the Economic Commission for Africa.

49. Alongside OHCHR, UNICEF, UNFPA and other agencies have made important contributions to the work of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators in developing indicators for measuring progress on Sustainable Development Goal target 16.9, on legal identity through birth registration. Going forward, UNICEF will lead the compilation of data for monitoring the associated indicator 16.9.1,[38] and will continue to maintain a global database on birth registration for children under 5, using both civil registration and vital statistics and household survey data.

50. A number of non-governmental organizations are also undertaking valuable initiatives as part of global efforts to strengthen civil registration and vital statistics. As one

[36] https://sustainabledevelopment.un.org/post2015/transformingourworld

[37] http://unstats.un.org/unsd/demographic/crvs/globalcrvs.htm

[38] Proportion of children under the age of 5 whose births are reported as being registered with the relevant national civil authorities.

notable example. Plan International recently published an assessment of the child rights implications of non-registration,[39] and has birth registration programmes in a total of 34 country offices, including several digital birth registration programmes. Plan International is also a core member of the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics partnership initiative, and led the partnership in its development of a civil registration and vital statistics digitization guidebook.[40] Further to this, Plan International provides guidance to identify and address risks to children in digitized birth registration systems, and is a member of the regional steering group for civil registration and vital statistics in Asia and the Pacific.

51. In order to support relevant work by partners and civil society, OHCHR has undertaken a broad range of communications, public engagement and outreach activities. For example, it has published interactive dashboards and world maps online to increase the visibility of the ratification of human rights obligations, and initiated programmes to strengthen the capacity of national stakeholders to make use of human rights indicators.[41] In order to strengthen the capacity of United Nations country teams to use human rights indicators, a joint policy statement and guidance were issued in partnership with the United Nations Development Group. Further to this, in 2015 OHCHR trained approximately 400 representatives of Governments, national human rights institutions, statistical organizations, civil society organizations, and United Nations and other international organizations on the development and use of human rights indicators.

V. Conclusions and recommendations

52. **All children have a right to birth registration, which should be fulfilled through the development of comprehensive, well-functioning systems for civil registration and vital statistics. This is essential for the realization and monitoring of associated human rights, as well as commitments under the 2030 Agenda for Sustainable Development. Yet, millions of people continue to be born and die without leaving a trace in civil registration systems, and therefore remain uncounted in vital statistics and invisible in development strategies.**

53. **The implementation of birth registration is varied and characterized by disparities between regions and population groups. There is concerning evidence that those who are unregistered continue to be children from the most marginalized population groups, and those living in situations of vulnerability. The registration of deaths is even further behind, in spite of its importance for monitoring the realization of human rights and progress towards achieving the Sustainable Development Goals.**

54. **In order to strengthen global efforts to achieve universal birth registration and vital statistics development, a human rights approach to implementation and monitoring is essential. This requires the prioritization of strategies to achieve universality and non-discrimination in the implementation of civil registration programmes, and a human rights approach to data and monitoring. The present report identifies the following recommendations in these areas:**

(a) **Birth registration, certification and the registration of other vital events must be made accessible to all, without discrimination of any kind, through special**

[39] Kara Apland and others, "Birth registration and children's rights: a complex story" (Plan International, 2014).

[40] www.crvs-dgb.org.

[41] http://indicators.ohchr.org.

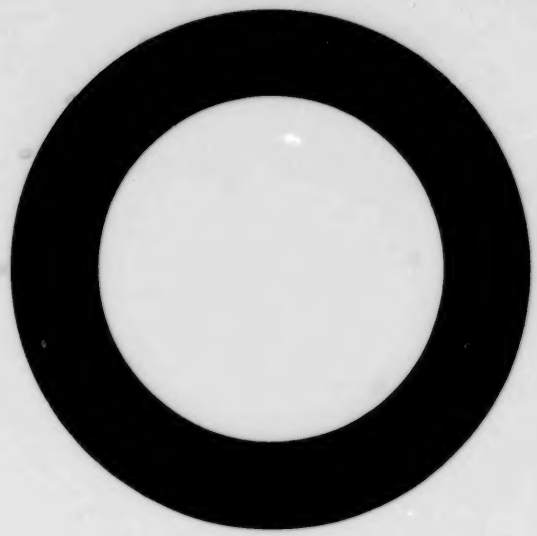
measures to reach the poorest, most geographically or otherwise isolated and most marginalized groups of the population;

(b) Specific measures in this respect should include the removal of registration fees, penalties for late registration and unreasonable documentation requirements, and efforts to make registration documents comprehensible and available in minority and local languages;

(c) Awareness-raising on the rights, benefits and responsibilities of civil registration is crucial to expanding registration rates. Interoperability, whereby civil registration services are provided via existing health or other services, has demonstrably supported access. Access to services and other entitlements should not be conditional on being registered or in possession of a birth certificate;

(d) It is essential that civil registration processes be designed with a view to ensuring non-discrimination and safeguarding against potential human rights risks, including risks to the right to privacy. Minimal information should be recorded on birth certificates, and any information obtained through civil registration processes that may lead to discrimination against an individual should be kept confidential by law;

(e) The commitment to improved and disaggregated data in the 2030 Agenda for Sustainable Development offers an opportunity to expand a human rights approach to data, yet at the same time it poses challenges for the protection of human rights. The Sustainable Development Goal monitoring and review process should be carried out on the basis of core human rights principles and standards throughout the data collection process, and in relation to data disaggregation.



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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Implementation of the technical guidance on the application of a human rights-based approach to policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 27/14, provides an overview of activities undertaken to implement the technical guidance since its adoption. It analyses issues that require further attention from a human rights perspective, including in relation to the newborn child, the quality of care in the delivery of health services for children and the marketing of breast-milk substitutes. It makes a number of recommendations for the Council to remain seized of the matter.

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I. Background

1. The technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age (see A/HRC/27/31) was requested by the Human Rights Council in its resolution 24/11 and was presented to the Council at its twenty-seventh session in September 2014.

2. In its resolution 27/14, the Council welcomed the technical guidance and urged States to disseminate and apply it as appropriate in the design, implementation, evaluation and monitoring of laws, policies, programmes, budgets and mechanisms for remedy and redress. It called on the United Nations High Commissioner for Human Rights, in close collaboration with the World Health Organization (WHO) and others, to continue the dialogue on the issue of preventable mortality and morbidity of children under 5 years of age and to prepare a report on the practical application of the technical guidance and its impact and present it to the Human Rights Council at its thirty-third session. The present report is submitted in accordance with that request.

3. The present report is the first follow-up report on prevention of child mortality and the implementation of the technical guidance. It is presented at the same time as the second follow-up report on maternal mortality, which focuses on the implementation of the Sustainable Development Goals (A/HRC/33/24). Given their close links, the reports should be read in conjunction with each other.

4. The technical guidance presented specific human rights guidance, organized according to the policy cycle of planning, budgeting, implementation, monitoring and evaluation, review, redress and international cooperation. The present report provides an overview of activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other partners, including WHO, to implement the technical guidance. It also highlights some of the areas that need further focus and support at international level.

II. Latest progress on child survival

5. The life of every child is unique — its loss is a tragedy. If that loss is preventable, the tragedy is even bigger, as an irreplaceable life could have been spared. Without the child surviving, no other rights have meaning.

6. Substantial progress has been achieved in the past decades in reducing child mortality. The global number of child deaths has declined from 12.7 million in 1990 to 5.9 million in 2015. At the country level, about a third of all countries have reduced child mortality by two thirds or more, including Cambodia, Ethiopia, Eritrea, Liberia, Madagascar, Malawi, Mozambique, Nepal, the Niger, Rwanda, Uganda and the United Republic of Tanzania. An additional 74 countries reduced their under-5 mortality rates by at least half and another 41 countries by at least 30 per cent.

7. That overall progress has been the result of many different factors, including renewed political commitment and major newborn and child health initiatives in recent years. Advances in immunization and the treatment of childhood infections, improvements in health services and medical technology, and overall respect for human rights, including

[1] Inter-Agency Group for Child Mortality Estimation, "Levels and trends in child mortality: report 2015" (2015), p. 3.

the right to education, the right to freedom from violence, the right to water and sanitation and overall improvement of the economic situation, have been key.[1] International cooperation and support has played a critical role.

8. Yet, despite remarkable progress, inequality persists in many countries, hampering the further reduction of child mortality among some groups of children. Examples in that regard have been referred to in the 2016 report of Save the Children Every Last Child,[2] which reveals that disadvantaged regions in a number of countries are making slower progress. The report shows, however, that the opposite is also possible and refers to the example of the Niger, where regions that were lagging behind, such as Zinder and Maradi, have experienced a faster rate of progress than Niamey (ibid., p. 23). Progress in those deprived regions has benefited children who had low chances of survival. It is important to note that inequalities undermine progress in developed countries as well as low- and middle-income countries.

9. Under the 2030 Agenda for Sustainable Development, a commitment is made to accelerating the progress made to date in reducing newborn, child and maternal mortality by ending all such preventable deaths before 2030, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births. In the Agenda, it is recognized that human dignity is fundamental and that the goals and targets are to be met for all segments of society, endeavouring to reach the furthest behind first.

10. Human rights-based policies and programmes need to ensure that children in hard-to-reach regions are given further attention and that investment in health care be made in regions that are falling behind. Furthermore, investment in child survival must be viewed through the lens of the rights of the child rather than driven merely by development and assistance needs.

III. Human rights and prevention of child mortality: an unfinished agenda

11. Recognizing under-5 mortality as a human rights issue implies understanding that the death of a child is not an inevitable fact of life, but rather is often the result of discriminatory laws, practices and attitudes, as well as institutional arrangements that compound poverty, disempowerment and injustice. The ultimate goal of a human rights-based approach is to change the social power dynamics that lead to inequalities and discrimination in accessing health services and failures to establish and maintain health systems that are available, accessible, affordable, acceptable and of high quality.

12. Human rights-based approaches to health in general have long been the subject of discussion. In particular, maternal health and wider sexual and reproductive health issues have been analysed through a human rights lens for many years (see A/HRC/27/20, para. 5). On the other hand, while reducing the mortality and morbidity of children under 5 years of age has been a focus of the global health community for several decades, it is only recently that the issue has been recognized as a human rights concern and brought to the attention of child rights mechanisms and child rights experts. A number of reasons explain that, including: (a) for a very long time the child rights community had focused on child protection issues and considered the health system merely an element of child protection;

[1] See United Nations Children's Fund (UNICEF), *Committing to Child Survival: A Promise Renewed* (2014).

[2] Save the Children, *Every Last Child* (London, 2016).

and (b) given the lack of autonomy of the small child, his or her rights tend to be associated with the mother and tend to be included in discussions of sexual, reproductive and maternal health. Continuum of care is critical and attention to the mother before, during and after birth is essential to improve the chances of survival for the child. Nevertheless, the interdependence between the mother and the child should not lead to a conflation of their rights and needs.

13. As explained in the technical guidance, a human rights-based approach to reducing under-5 mortality requires the identification of relevant duty-bearers and rights holders and building the capacity of the former to fulfil their obligations and of the latter to claim their rights related to child health and survival. Yet, in the case of newborns, infants and under-5 children, that becomes highly complex, because the young child is not autonomous and depends on others for the realization of his or her rights. Often the rights of newborns and infants are not explicitly taken into consideration, as they are not perceived as active agents. A human rights-based approach requires recognition that the newborn, infant and under-5 child is not merely a passive receiver of care, but is a rights holder and thereby entitled to quality health services without discrimination.

14. Collaboration between the communities working on rights and health is emerging in the area of child health and prevention of mortality. Clear examples are the annual day of discussion of the Human Rights Council on the right of the child to health in 2013, followed by a number of reports by OHCHR and WHO, and expert meetings on child mortality and human rights, as well as the development of the technical guidance. General comment No. 15 (2013) of the Committee on the Rights of the Child on the right of the child to the enjoyment of the highest attainable standard of health, as well as the recent report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on early childhood (A/70/213), demonstrate the increasing interest of, and attention paid, by United Nations human rights mechanisms.

15. The work of the independent Expert Review Group on Accountability for Women's and Children's Health placed the issue of human rights at the top of the health agenda and called for the establishment of a global commission on health and human rights of women and children to propose ways to protect, augment and sustain their health and well-being. The establishment of the Independent Accountability Panel and the Global Strategy for Women's, Children's and Adolescents' Health (2016-2030) will be key in bringing both areas of work closer. When leading a sub-working group on human rights in the context of the development of the Global Strategy, OHCHR re-emphasized the need not to leave anyone behind, with a focus on non-discrimination and accountability.

16. From a child rights perspective, it is critical that all the various global initiatives give the appropriate space to the young child and that the child be at the centre of the discussion, including through participatory approaches for children and their caregivers, in accordance with the Convention on the Rights of the Child.

17. During the past two years, a key question that has come up in the discussions of the technical guidance by those outside the human rights field has been: does a human rights-based approach reduce child mortality?[3] While there is no straightforward answer to that question, evidence is starting to emerge that using a human rights-based approach has a positive impact on children's health,[4] which supports the case for human rights to be fully integrated into efforts to improve child health, survival and development.

[3] See Flavia Bustreo, Paul Hunt and others, *Women's and Children's Health: Evidence of Impact of Human Rights* (Geneva, WHO, 2013).

18. Furthermore, the issue is not so much how many children a human rights-based approach saves, but more specifically if international human rights law allows for dignity, equality, participation and accountability not to be placed at the centre of policy and programme development. Given that States have ratified the Convention of the Rights of the Child and assumed obligations vis-à-vis children on a voluntary basis, the inclusion of human rights principles in the development of policies and programmes is not a choice but rather an obligation: a legal and a moral obligation that the State has towards the smallest of its citizens.[1]

19. Through the work undertaken since the finalization of the technical guidance, it has become clear that the area of human rights-based approaches to newborn, infant and under-5 health has many dimensions in addition to prevention of mortality of children, and that a specific child rights and child health dialogue is needed. That has also been signalled by the Special Rapporteur on the right to health in his report on early childhood (A/70/213).

20. In the context of the discussions on the technical guidance, OHCHR has been approached by different stakeholders raising child health issues requiring urgent attention from a rights perspective, including: pain management for the newborn child; palliative care for children; consent issues regarding surgeries, including for intersex children; paediatric medicines; children born with severe impairments and life-threatening health conditions, including severely premature babies; abandonment of the newborn; and the role of health personnel in assessing violence against children, including shaken baby syndrome and sexual violence. Stakeholders also raised the inequitable access of infants and young children to HIV testing, treatment and care, especially in sub-Saharan Africa, contributing to disproportionately high AIDS-related mortality rates among children.

21. The technical guidance has made a great contribution to promoting the dialogue between human rights experts and mechanisms with obstetricians, neonatologists and paediatricians, but there is still a long way to go before that area of work is fully developed.

IV. Implementing the technical guidance at the country level

A. Dissemination

22. Efforts have been made to ensure the dissemination of the technical guidance by OHCHR and United Nations system agencies, including WHO, as well as civil society partners, national human rights institutions and other stakeholders.

23. Following its launch in September 2014 by the High Commissioner for Human Rights and the WHO Assistant Director-General for Family, Women's and Children's Health, the technical guidance was widely disseminated. In addition to coverage of the launch by OHCHR, WHO and the Partnership for Maternal, Newborn and Child Health, as well as United Nations Information Centres, the technical guidance was distributed via the Child Rights Information Network and the African Child Information Hub. Furthermore, it was disseminated via patient information websites, including those of the International Alliance of Patients' Organizations and the European Association for Children in Hospitals, and by international advocacy groups, such as the International Baby Food Action Network.

[1] Statement of the High Commissioner for Human Rights on the occasion of the launch of the technical guidance.

24. The technical guidance was shared in various meetings, including the One Asia Breastfeeding Partners Forum in Malaysia, and was brought to the attention of participants at different forums, including the United Nations Inter-agency Task Force on the Prevention and Control of Non-communicable Diseases, the African Child Policy Forum in South Africa and the Social Forum on access to medicines. It was also presented to an expert meeting on the right to health in early childhood, as well as to the Seventh Europediatrics Conference in Florence, Italy. The Partnership for Maternal, Newborn and Child Health also promoted the technical guidance among its network of over 500 members. It was also discussed in a number of stakeholder meetings for women's and children's health, including in India and South Africa.

25. Working-level discussions on the technical guidance were held between OHCHR and WHO, and the Office of the Secretary-General as part of Every Woman Every Child, and the United Nations Children's Fund (UNICEF) Health Section staff in New York. Furthermore, the High Commissioner for Human Rights met with the Executive Director of UNICEF to discuss the implementation of the technical guidance at the country level.

26. WHO and OHCHR produced an information leaflet on "Preventable deaths among the world's youngest children", which was also widely disseminated. Other tools, including a knowledge summary on operationalizing human rights in efforts to improve health, were developed by WHO and the Partnership for Maternal, Newborn and Child Health. With other partners, OHCHR produced a number of guides on maternal and child health for health policymakers, health workers, the judiciary and national human rights institutions. WHO uses the technical guidance as a basis for integration of human and child rights standards in its ongoing work in developing global standards of facility-based care for young children.

27. Following the distribution of the technical guidance among permanent missions in Geneva, Cyprus reported that the technical guidance had been distributed to all the departments of the Ministry of Health involved in providing services to children, health-care providers involved in the provision of health care to newborns and children and professionals in charge of collecting data related to mortality of children working in the health monitoring unit of the Ministry of Health. It further reported the consideration of the technical guidance in the development of the country's national strategy on the promotion, protection and support of the rights of children related to health. Mozambique informed OHCHR that the technical guidance had been disseminated to the Ministry of Health, health-care providers and the National Child Council, which coordinates issues related to children's rights. The technical guidance is being used to build health programmes and ensure better coordination between health-care providers and communities.

28. Human rights mechanisms have been key in promoting the use of the technical guidance by recommending its implementation at the national level to Member States. Those mechanisms will therefore play a key role in ensuring accountability for human rights-based approaches to preventing child mortality in their follow-up dialogue with States.

29. The Committee on the Rights of the Child has recommended the implementation of the technical guidance in its concluding observations for Benin, Colombia, the Dominican Republic, Eritrea, Ethiopia, the Gambia, Ghana, Haiti, Kenya, Mexico, Peru, Senegal, Turkmenistan, the United Republic of Tanzania, the Bolivarian Republic of Venezuela, Zambia and Zimbabwe. Equally, as part of the universal periodic review, various States have recommended taking action at all levels to address the interlinked root causes of preventable mortality and morbidity of children under 5 and consider applying the technical guidance to Angola, the Gambia, Guyana, Lesotho, Liberia and the Marshall Islands. In addition, the Special Rapporteur on the right to health has recommended its implementation in his missions to Malaysia and Paraguay.

30. OHCHR is supporting the establishment and strengthening of national mechanisms for reporting to and follow-up on recommendations from regional and international human rights mechanisms, including treaty bodies, special procedure mandate holders and the universal periodic review.

B. Country-level activities

1. Dominican Republic

31. Following a UNICEF initiative in the Dominican Republic in 2014, OHCHR, WHO and the Pan American Health Organization were invited to discuss with the United Nations country team and civil society organizations how a human rights-based approach could contribute to national efforts to reduce preventable deaths of newborn, infant and under-5 children. The human rights discussions with the United Nations country team were used in the development of an inter-agency initiative to prevent and reduce child, infant, newborn and maternal mortality. The process and discussions demonstrate how initiatives within the Human Rights Council can complement efforts undertaken at the national level to effect positive change, in accordance with the human rights obligations undertaken by the State.

32. The right to health and comprehensive health care is enshrined in the Constitution of the Dominican Republic. Furthermore, in the country's National Development Strategy 2030, a view is expressed of a society with equal rights and opportunities for all, where basic services and rights, including the right to health, are guaranteed to all without discrimination. It states that all plans, programmes, projects and public policies must be informed by a human rights-based approach.

33. The Dominican Republic has achieved significant progress in advancing children's rights and has shown strong political willingness to improve infant and under-5 health. The Ministry of Health has incorporated into the national immunization schedule the rotavirus and pneumococcal vaccines, which will have a strong impact on reducing infant deaths from diarrhoea, pneumonia and meningitis. The country has strategies, plans and programmes in the health sector, in addition to specific projects aimed at reducing child, infant, newborn and maternal mortality. Despite many efforts, there has been no improvement in the neonatal mortality rates over the past decade, which are above the regional average for Latin America and the Caribbean.

34. During discussions, it became clear that there are complex social dynamics that impact on health service users and that there is an urgent need to strengthen the capacity of public hospitals with adequately trained health professionals, including by re-establishing the function of the midwife. It is also necessary to ensure the humane and dignified treatment of users of health services, change health workers' attitudes and empower patients to claim their rights. The importance of strengthening reporting mechanisms and oversight by civil society was also highlighted. Furthermore, reference was made to the need to strictly follow standards for prevention and infection control in health facilities, which are essential in controlling sepsis — the primary cause of newborn deaths in the Dominican Republic. Ensuring accountability and reinforcing the investigation capacity of the Committee of Medical Audits in cases of newborn and infant deaths was strongly emphasized.

35. Campaigns on radio and television are being conducted, with the support of the Ministry of Health and UNICEF, to ensure an increase in the registration of children at birth in public hospitals. UNICEF fostered dialogue to incorporate birth registration of newborns in maternity hospitals as one of the new certification criteria of the Expanded Baby-Friendly Hospital Initiative. An alliance with the Ministry of Health allowed primary

health-care units to become key partners, as they inform mothers about the importance of registration and help them in applying for identity cards.

36. The inter-agency initiative is a clear example of the integration of human rights-based approaches in reducing newborn, infant and under-5 mortality and demonstrates the important role of the United Nations country team in that regard.

2. United Republic of Tanzania

37. On 29 and 30 June 2015, OHCHR, in conjunction with WHO, the Ministry of Health, the Commission for Human Rights and Good Governance and the United Nations country team in Dar es Salaam organized a consultation on the role of human rights mechanisms in improving newborn, infant and under-5 health. Participants were from the health and human rights fields, including United Nations agencies, the Government and civil society. There were representatives from medical hospitals, including Amana Hospital, the Bugando Medical Centre, the Kilimanjaro Christian Medical Centre, the Mbeya Referral Hospital, the Mnazi Mmoja Hospital, the Muhimbili National Hospital and the Mwananyamala Hospital.

38. The United Republic of Tanzania has made substantial advances in improving child survival, but the reduction in newborn mortality has been much slower, as it still accounts for 40 per cent of deaths of Tanzanian children younger than 5 years. Much of the progress has been due to prenatal and postnatal care, vaccinations, nutritional supplements and overall improvement of health services.

39. The discussions during the consultation highlighted the importance of enhancing the quality of health services, particularly for newborn children, and ensuring access to medication for children affected by infections, including pneumonia, diarrhoea, measles, malaria and HIV/AIDS. Improving the nutrition of small children was also raised as a requirement to ensuring the implementation of the rights of the child to survival and development. Particular emphasis was paid to the health situation and the rights of children affected by albinism and refugee children. Other elements of the discussion referred to capacity and funding gaps in the health sector, the unavailability of essential medicines and the need to improve health governance. Integration of human rights principles into health service delivery, enhancement of partnerships and strengthened social accountability were recommended, as well as further investment in disadvantaged regions.

40. Following the meeting's recommendation that human rights principles be integrated in the delivery of health services and quality of care, particularly for newborn children, OHCHR, in consultation with WHO, commissioned an assessment of the state of newborn health in a number of selected hospitals. At the time of preparation of the present report, the assessment was under way in Zanzibar.

41. The assessment comes at an important moment for Zanzibar, since in 2015 it received the Future Policy Award for its Children's Act. That piece of legislation earned the award for its balanced coverage of child abuse and violence against children and for its promotion of children's rights. It lays the foundation for the establishment of a comprehensive national child protection system to deal with cases of children in need of care and protection. In the Act, it is stipulated that the child has the right to medical care and immunization and should not be denied medical care for reasons of religion or other beliefs. It is stated that every child shall be registered upon birth and that health authorities shall cooperate to secure the registration of all births. Any person who performs professional or official duties with respect to a child, including a doctor, medical officer or traditional health practitioner, who has a reasonable belief that a child's rights are being significantly infringed has the duty to report it. A chapter of the Act is devoted to consent to medical interventions and surgical operations, as well as HIV testing.

C. Work by civil society partners

42. Civil society actors have a key role in promoting human rights-based approaches to prevention of child mortality and in implementing the technical guidance. For example, both the "Child Health Now" campaign by World Vision and "Every One" campaign by Save the Children have focused on preventing deaths of children under 5 and supported human rights-based approaches by addressing determinants of child health, social and community-based accountability mechanisms and citizen's empowerment. They also opened up spaces for children and caregivers to participate in the decision-making processes that affect children's survival and health.

43. In the Niger, World Vision initiated and led a coalition to ensure accountability for effective implementation of the free health-care policy, which grants all children under 5 access to free health care. Through the Child Friendly National Budget Initiative in Zimbabwe, Save the Children, the National Association of Non-Governmental Organizations and UNICEF supported child-led groups in eight provinces to engage in pre-budget consultations, resulting in increased budget allocations for children's health and education.

44. Much work has been undertaken by civil society to enhance social and community-based accountability mechanisms, a core element of a human rights-based approach, to monitor health services and ensure children's engagement in decision-making processes. Examples of social and community accountability mechanisms include the "Citizen Voice and Action" and "Citizens' hearings" methodologies.

45. "Citizen Voice and Action" is a local-level advocacy methodology that aims to advance essential services, such as health, by improving the relationship between communities and government. This methodology has been used by World Vision and other partners to strengthen governments' commitments to child survival. For example, in Armenia, the Government responded to "Citizen Voice and Action" by creating new incentives for doctors to visit the most vulnerable people in rural areas.

46. Citizens' hearings are open and constructive dialogues that give communities the possibility to share recommendations for improved health services with local and national leaders. That form of social accountability serves the double purpose of empowering citizens to know their rights and to hold their leaders to account on commitments made to end the preventable deaths of women and children. The International Planned Parenthood Federation, Save the Children, White Ribbon Alliance and World Vision International have been working with local and national partners to organize Citizens' hearings on health around the world, including Afghanistan, Bangladesh, Burkina Faso, the Democratic Republic of the Congo, Ethiopia, India, Indonesia, Kenya, Malawi, Mali, Nepal, the Niger, Nigeria, Pakistan, Uganda, the United Republic of Tanzania and Yemen.[7]

47. In 2015, a number of civil society organizations held the Global Citizens' Dialogue in Geneva during the World Health Assembly. A key objective of the citizens' hearings movement is to strengthen the feedback loop between global processes and local and national decision-making processes.

48. Involving children in these forms of social accountability is crucial to bringing their views to the attention of key stakeholders including communities, civil society, journalists

[7] See http://static1.squarespace.com/static/54d012e0e4b081a66404a5fb/t/56027e1ce4b033fc4a33c1d8/1443001714111/111_REPORT_WEB.pdf.

and government representatives and to inform policies and implementation priorities at local, national and international levels."

V. Synergies with other initiatives

49. A number of major initiatives at global level are aimed at saving and improving the lives of women and children. Every Woman Every Child is a global movement that mobilizes and intensifies international and national action to address the major health challenges facing women, children and adolescents everywhere. At its inception, the movement put into action the Global Strategy for Women's and Children's Health (2010-2015). Building on its success, an updated Global Strategy for Women's, Children's and Adolescents' Health (2016-2030), fully aligned with the Sustainable Development Goals was launched by the Secretary-General in September 2015. A key strategic priority for the Global Strategy is the development of an updated accountability framework to ensure strong implementation of the Sustainable Development Goals. To that end, the Independent Accountability Panel was established in 2015 to provide independent assessment of progress and challenges to help strengthen the response from the international health community and countries.

50. Other important initiatives at global level are also key to saving and improving children's lives and their right to health. For example, the adoption of the Every Newborn Action Plan in 2014 at the World Health Assembly has been critical in centring attention on health interventions on the newborn child and reinvigorated the resolve for action in that regard. The Global Breastfeeding Advocacy Initiative established by UNICEF, WHO and other partners aims at increasing political commitment to, and investment in, breastfeeding as the cornerstone of child nutrition, health and development.

51. In 2012, the Comprehensive Implementation Plan on Maternal Infant and Young Child Nutrition called for strengthening legislative, regulatory and/or other measures to control the marketing of breast-milk substitutes. During the Second International Conference on Nutrition in 2014, ministers and representatives of countries agreed that governments should protect consumers, especially pregnant women, mothers and children, from marketing and promotion of foods and called for the implementation of the International Code of Marketing of Breast-milk Substitutes and relevant World Health Assembly resolutions. In 2014, WHO, in close collaboration with UNICEF, established the Network for Global Monitoring and Support for Implementation of the International Code of Marketing of Breast-milk Substitutes and Subsequent relevant World Health Assembly Resolutions (NetCode). NetCode assists countries and civil society in strengthening capacity to monitor the Code and all relevant subsequent World Health Assembly resolutions, and in ensuring effective enforcement and monitoring of national legislation and regulations related to the Code. Key non-governmental organizations, including the International Baby Food Action Network, Helen Keller International and Save the Children, academic centres and selected countries have joined this network.

52. Efforts are ongoing to ensure that the technical guidance and human rights principles are integrated within the different current initiatives.

Ibid.

VI. Issues in focus

A. Mortality projections

53. Estimating child mortality is challenging for most developing countries. Only about 60 countries worldwide have fully functioning and complete civil registration systems that can be relied on as a single source to produce reliable mortality estimates. Where there are no well-functioning civil registration systems, modelling exercises are usually required to generate reliable child mortality estimates. The challenges become even greater in the context of conflict and humanitarian crisis.

54. The Inter-Agency Group for Child Mortality Estimation noted a wide variation in how European countries define infant mortality, owing to differences in birth and death registration practices — that is, "differences in the cut-off points for acceptable weight or estimated gestation period to be registered as a birth and subsequent death".[8] This is the case for some of the Eastern European countries.[9] The Committee on the Rights of the Child in its concluding observations on Uzbekistan (CRC/C/OPSC/UZB/CO/1) raised that issue and indicated that the State party's definition of a live birth was not consistent with the internationally recognized WHO definition, thus hindering an objective assessment of the actual rates of neonatal infant mortality and the effective implementation of approaches for addressing it (CRC/C/UZB/CO/3-4).

55. Scenario-based projections by WHO indicate that, between 2016 and 2030, 94.4 million children are projected to die before the age of 5 years if the 2015 mortality rate remains constant in each country, and 68.8 million would die if each country continues to reduce its mortality rate at the pace estimated from 2000 to 2015. If all countries achieve the relevant target of the Sustainable Development Goals, the projections would stand at 56 million deaths by 2030.[10]

56. Sub-Saharan Africa will face unique challenges in reducing the number of child deaths. If current trends continue, 37 million children in sub-Saharan Africa will die in the next 15 years.[11] Extensive efforts will be required to provide the services and interventions necessary to meet the additional demand generated by a growing number of live births and chid population in the region. There is a 95 per cent probability that the number of children under 5 years will grow by an extra 26 to 57 million, going from 157 million in 2015 to 183-214 million in 2030.[12] In South Asia, reducing child mortality must also be urgently accelerated. Two out of the 8 countries in the region, Afghanistan and Pakistan, will need to accelerate progress to achieve the target of the Sustainable Development Goals. Further support is to be given to those countries to ensure that the right of the child to survival is implemented on equal basis with other regions.

57. In order to monitor effectively the number of children dying, the development of civil registrations systems to gather accurate, timely, disaggregated data that can inform decision-making, programming and planning is required. In that respect, well-functioning civil registration systems are essential to bring about accountability for the implementation of the 2030 Agenda for Sustainable Development, as they provide the most reliable basis

[8] Inter-Agency Group for Child Mortality Estimation, "Report 2015", p. 13.

[9] Ibid., p. 14.

[10] "Global, regional and national levels and trends in under-5 mortality between 1990 and 2015, with scenario-based projections to 2030: a systematic analysis by the Inter-Agency Group for Child Mortality Estimation" (WHO, 2015).

[11] Ibid.

[12] Ibid.

for monitoring multiple targets of the Sustainable Development Goals, including those requiring accurate, disaggregated data on mortality rates and causes.

B. The newborn child

58. The neonatal period, the first 28 days of life, is the most vulnerable time for a child. Despite the substantive progress on reduction of child mortality, deaths of newborn babies are falling slower than deaths occurring in other periods of childhood. According to the Inter-Agency Group for Child Mortality Estimation, if current trends continue, the share of neonatal deaths is projected to increase from 45 per cent of under-5 deaths in 2015 to 52 per cent in 2030.[13]

59. Some countries have achieved enormous progress in reducing newborn deaths. For example, between 1990 and 2012, China saw a decline of over 80 per cent and Cambodia of more than 60 per cent, showing that progress is possible. However, unless further efforts are made globally to tackle deaths of newborn children, there is a risk that child mortality will stall.[14]

60. Focusing on the newborn child is urgent from both medical and human rights perspectives. While human rights mechanisms, including the Committee on the Rights of the Child, have devoted some attention to the newborn child, including through that Committee's development of general comment No. 7 (2005) on implementing child rights in early childhood, a focused discussion at international level on the application of the Convention on the Rights of the Child to the newborn child could accelerate political will and ensure progress. That is critical given the vulnerability, lack of autonomy and full dependency on his or her caregivers of the newborn child. An urgent shift is required at all levels to give the newborn and his/her rights due attention. The application of the Convention on the Rights of the Child to the newborn child must be further discussed, understood and specified, and dialogue in that regard should be initiated in health and human rights forums.

61. Particularly inspiring is a text developed by a group of obstetricians, neonatologists and paediatricians on the newborn child.[15] In it, the authors recognize that no one is entitled to put at risk the health or physical integrity of a newborn child irrespective of racial, geographic or cultural origin or sexual discrimination, and that every live newborn is entitled to appropriate assistance during delivery. It focuses on the right of every newborn to be born in the most suitable place, considering his or her foreseeable care requirements, especially if she or he suffers from or is at risk of an illness, and the right of the newborn child to be with his or her parents. It also raises the complex situation of newborns with health problems.

62. Complications from childbirth can have a significant impact on newborns and their development. Around 10 per cent of all newborns in every country need assistance to begin breathing.[16] If that assistance is not provided, the newborn may die of asphyxia or suffer consequences such as cerebral palsy and developmental delay. Yet, in developing countries, many health facilities do not have the equipment to resuscitate newborns. UNICEF has reported that quality of care for the newborn child is grossly lacking and, in regions with the highest newborn mortality rates, access to postnatal care is abysmally low.[17] This

[13] Inter-Agency Group for Child Mortality Estimation, "Report 2015", p. 5.
[14] Save the Children, *Ending Newborn Deaths: Ensuring Every Baby Survives* (London, 2014).
[15] See www.ucmp.com.
[16] Save the Children, *Ending Newborn Deaths*.
[17] UNICEF, *Committing to Child Survival*, p. 7.

reflects again the crisis of inequality between children born in some regions and others, and the huge difference within countries with poor and marginalized communities receiving the poorest quality of care.

63. Of particular concern is the situation of premature and severely ill newborns and children born with severe impairments and/or life-threating health conditions. While there is a paucity of data in that regard, a human rights-based approach must ensure that those newborn children have access to the quality care they need, including psychosocial support for the families and the full complement of medical services.

64. Training on newborn care is essential to improve the child's chance of survival. In that context, enforcing laws and policies that promote access to newborn care is a key component of a human rights-based approach to preventing mortality of the newborn child.

65. In the context of the Zika virus outbreak, the situation of children affected by the virus merits special attention. The High Commissioner for Human Rights called for all public health responses to the Zika virus to fully integrate human rights, reiterating the importance of focusing on women's right to health and sexual and reproductive rights and at the same time urging States to prepare to provide proper support and care for children with Zika-related impairments. Media attention on children affected by Zika has focused on images and at times descriptive language that is pejorative, treating them as an oddity and undermining their dignity. Such portrayals reinforce and may exacerbate stigma and discrimination against children with disabilities. Reports show that children with microcephaly are at higher risk of abandonment by their parents, and suggest that the rates of abandonment of children may rise rapidly over the next years.[16] It is essential that sufficient resources be allocated to programmes to empower families of children with Zika-related impairments to care for the children and minimize risks of abandonment.

C. Quality of care

66. All children's health services and programmes must comply with the criteria of availability, accessibility, acceptability and quality, which are essential components of the right of the child to health. Quality requirements include skilled health professionals, scientifically approved and unexpired drugs and hospital equipment.[17] In the context of newborn, infant and under-5 health, that means that health professionals must be trained in obstetrics and newborn and paediatric care and that children have access to paediatric drugs and hospital equipment adapted to them. It also implies supportive supervision, monitoring and data analysis for quality improvement.

67. The Committee on the Rights of the Child has encouraged States to adopt child-sensitive health approaches throughout different periods of childhood, such as the Expanded Baby-Friendly Hospital Initiative, which protects, promotes and supports rooming-in and breastfeeding, and child-friendly health policies focused on training health workers to provide quality services in a way that minimizes pain, fear, anxiety and suffering of children and their families.[18]

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[16] Women Enabled International, "Talking Points: Zika, Microcephaly, Women's Rights, and Disability Rights". Available from womenenabled.org/publications.html.

[17] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health.

[18] Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the highest attainable standard of health.

68. During the discussions concerning the technical guidance, allegations emerged concerning mistreatment of women during labour, including being slapped, yelled at, insulted and denied pain medicine. Such attitudes are unacceptable and contribute to women not returning to health facilities to seek attention at the time of birth or for their children. Quality must therefore be redefined in such a way that the dignity and worth of the patient is central.[22] Factors that dehumanize health care must be removed, including understaffing and the deterioration of health facilities.[23] Health workers must be supported to ensure that they have appropriate conditions of work to provide adequate care to patients in accordance with human rights principles. Training and capacity-building on human rights and child rights principles for health workers can have a positive impact in that regard.

69. There is now broad recognition that health care must be organized around people's needs and expectations, including the small child. In the case of children, that requires implementing the right of the child to express their views and be consulted in all matters that affect him or her and that this be implemented from the earliest stages in ways appropriate to the child's capacities, best interests and right to be protected from harmful experiences. As rights holders, even the youngest children are entitled to express their views. The ongoing work by WHO in that area, including efforts to develop and adopt a WHO global strategy on people-centred and integrated health services and the preparation of human rights-based global frameworks for quality of care for maternal and newborn health and child health, respectively, are testimony to this growing recognition. Those frameworks address both the provision of care and experience of care, and require systematic integration of human and child rights principles and standards in guiding how health care must be constructed, implemented, monitored and evaluated. Participation and accountability are key components of the frameworks.

D. Inappropriate marketing of breast-milk substitutes

70. One of the key ways to reduce newborn, infant and under-5 mortality and morbidity is breastfeeding. According to research published in *The Lancet* in 2016,[24] increasing breastfeeding to near-universal levels could save the lives of more than 820,000 children under the age of 5 each year. In addition, boosting rates of exclusive breastfeeding for infants under 6 months of age would significantly reduce costs for treatment of childhood illnesses such as pneumonia, diarrhoea and asthma.

71. In spite of those advantages, globally nearly two out of three infants under 6 months are not exclusively breastfed — a rate that has not improved in two decades. Fewer than 1 in 5 infants are breastfed for 12 months in high-income countries and only two out of three children between 6 months and 2 years of age receive any breast milk in low- and middle-income countries.[25]

72. A significant barrier to improved breastfeeding rates in many countries remains the aggressive marketing of breast-milk substitutes. Global sales of breast-milk substitutes total US$ 44.8 billion, and are expected to rise to US$ 70.6 billion by 2019.[26] Aggressive and inappropriate marketing of breast-milk substitutes and other food products that compete

[22] Tarek Meguid, "(Re)Humanising Health Care-Placing Dignity and Agency of the Patient at the Center", *Nordic Journal of Human Rights*, vol. 34, No. 1 (2016).

[23] Ibid.

[24] WHO, *Marketing of Breast-milk Substitutes: National Implementation of the International Code: Status report 2016*.

[25] Ibid.

[26] Ibid.

with breastfeeding continues to undermine efforts to improve breastfeeding rates. Such marketing practices often negatively affect the choice and ability of mothers to breastfeed their infants optimally. The International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly resolutions are vital to regulate and reduce inappropriate marketing. Furthermore, in the Guiding Principles on Business and Human Rights, it is stipulated that all business enterprises should operate with respect for human rights. In the context of the marketing of breast-milk substitutes, the responsibility to respect human rights requires undertaking effective human rights due diligence to identify any risk that marketing of breast-milk substitutes may have an adverse impact on human rights, including the right of the child to health, and to take all necessary steps to prevent and mitigate such risks.

73. The national implementation report of the international code 2016 shows that too few countries have adopted strong legislation to reduce and eliminate inappropriate marketing of breast-milk substitutes, and that only a handful of countries that have legal measures in place and have established operational monitoring and enforcement mechanisms.

74. The report makes direct reference to the technical guidance and the recommendation therein to countries to regulate private actors, such as pharmaceutical companies, commodities and device manufacturers, producers and marketers of breast-milk substitutes in order to prevent violations of child health-related rights and ensure accountability, including remedy and redress if violations occur. The Committee on the Rights of the Child has further stated that countries are required to introduce into domestic law and implement and enforce the International Code on Marketing of Breast-milk Substitutes.

75. Since 2011, a number of countries have adopted or amended strong legal measures incorporating all of the Code's provisions. In 2012 and 2014, Viet Nam and Armenia, respectively, successfully amended their regulations to ensure full adherence to the Code.

76. In May 2016, the World Health Assembly welcomed WHO guidance and recommendations on ending inappropriate promotion of foods for infants and young children aged between 6 months and 3 years. In the recommendations, it is stated that all milk products specifically marketed for children between 6 and 36 months are de facto breast-milk substitutes and must be regulated under the scope of the International Code.

E. Impact on children of attacks on health facilities

77. Attacks on hospitals and medical personnel in conflict compromise the right of the child to health at many levels. The destruction in April 2016 of the Médecins sans frontières-supported Al Quds Hospital in Aleppo, killing civilians, children and medical personnel, including one of the last remaining paediatricians in the area, is a clear example. Attacks on hospitals limit access to medical care and can annihilate the long-term efforts to reduce child mortality, improve maternal health and fight disease.[20]

78. Attacks on hospitals and medical personnel are one of the six grave violations against children during armed conflict. In its resolution 1998 (2011), the Security Council highlighted the impact of attacks on hospitals on children during armed conflict and requested the Secretary-General to include in his reports on children and armed conflict those parties to armed conflict that engage in that category of violations. In its resolution 2286 (2016), the Security Council strongly condemned attacks on medical personnel in conflict situations, demanding an end to impunity for those responsible. Attacks against

[20] See www.un.org/press/en/2016/sc12347.doc.htm.

hospitals contravene well-established norms international humanitarian law, including customary norms, and may amount to war crimes and crimes against humanity.

79. Attacks on health workers, particularly those conducting vaccination campaigns can have a direct impact on child mortality, because immunization continues to be one of the best ways to ensure child survival. As noted in the report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health (A/HRC/22/31 and Corr.1), ensuring access to the full schedule of childhood immunizations recommended by WHO is critical to the prevention of an expanding array of illnesses, as well as to diseases that may emerge later in life.

80. According to the United Nations Assistance Mission in Afghanistan,[1] a total of 89,873 children could not be vaccinated during the December 2015 sub-national immunization days in Afghanistan. Over the past decade, the Taliban released several statements in support of the polio eradication programme. For example, on 13 May 2013, the Taliban issued a public statement expressing support for polio vaccination campaigns with a caveat that campaigns must be led by Afghan personnel and respect Islamic values. In 2015, however, the United Nations Assistance Mission in Afghanistan, WHO and UNICEF documented 22 incidents directly affecting vaccination campaigns attributed mainly to anti-government elements including the Taliban. The reported incidents included killing, maiming and abduction of vaccinators, threats and intimidation against them, as well as destruction of vaccination kits. Attacks on polio vaccinators have also been documented in Pakistan and Nigeria. The Global Polio Eradication Initiative warns that persistent attacks against polio vaccinators put an enormous strain on efforts to halt transmission rates.

VII. Next steps

81. While every newborn, infant and under-5 death can be attributed to a medical cause, the underlying reasons why children die cannot be explained from a medical perspective only. Many factors increase the risk of a child dying, including marginalization, poverty, discrimination, inequalities and a lack of education and health-care knowledge of caregivers. Children also die because of failures to maintain health systems that are accessible, available, affordable, acceptable and of quality and because of violence, conflict and insecurity.

82. Child deaths will only be eradicated if the root causes leading to inequalities are targeted. Hence, the importance and added value of a human rights-based approach. The technical guidance has made a major contribution to bringing human rights perspectives to the centre of public health discussions related to newborn, infant and under-5 health. Yet, implementing human rights-based approaches requires extensive and sustained engagement, commitment and adequate resources. Legislative, policy and programme reforms, behaviour change among duty bearers and empowerment of rights holders are long-term processes.

83. Dialogue and capacity-building with different stakeholders in the area of prevention of child mortality has been initiated but needs further strengthening and resources. That work should continue, in cooperation with Member States, on the understanding that realization of the right of the child to health is a shared responsibility of both developed and non-developed countries. Next steps include documenting good practices on the practical

[1] United Nations Assistance Mission in Afghanistan, "Education and Health Care at Risk", April 2016. See http://unama.unmissions.org/un-chief-afghanistan-do-more-now-protect-civilians-unama-releases-civilian-casualty-data-first.

application of the technical guidance in law and policy development, and in delivery of high-quality care for children under 5, as well as providing operational guidance to various stakeholders, from health policymakers to health practitioners, on the value and application of human rights. Given that OHCHR resources for child rights are severely constrained, that can only be undertaken with full support from Member States.

84. Bearing in mind that around 40 per cent of the deaths of under-5 children concern the newborn child, further attention must be given to that stage of childhood. An expert dialogue on how human rights instruments, particularly the Convention on the Rights of the Child, apply to the newborn child could provide high-level visibility and contribute to accelerating and deepening political will to achieve the Sustainable Development Goals, with a particular focus on target 3.2 aimed at reducing neonatal mortality to at least as low as 12 per 1,000 live births. That could feed into the work of the Independent Panel on Accountability and the follow-up and review of the Sustainable Development Goals under the high-level political forum on sustainable development. Such expert discussion could build on the work already initiated by a group of obstetricians, neonatologists and paediatricians (see para. 62 above) and include human rights mechanisms such as the Special Rapporteur on the right to health, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities and the Special Representative of the Secretary-General on Violence against Children. The results of the expert discussion could be presented to the Human Rights Council as part of the follow-up process on implementation of the technical guidance.

85. Investing in child survival continues to be the most important step in ensuring a future for all children, independent of the country they are born in. All efforts must be made by States, the international community and other stakeholders to uphold the right of the child to survive. Member States should report on the implementation of the technical guidance through existing international human rights mechanisms, as well as in the context of the monitoring and accountability framework of the Sustainable Development Goals.